S. HRG. 100-679

APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT TO U.S. PARTICIPATION IN ACTIONS OF INTERNATIONAL FINANCIAL INSTITUTIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON
HAZARDOUS WASTES AND TOXIC SUBSTANCES

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

JUNE 16, 1988

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APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT TO U.S. PARTICIPATION IN ACTIONS OF INTERNATIONAL FINANCIAL INSTITUTIONS

THURSDAY, JUNE 16, 1988

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON HAZARDOUS WASTES
AND TOXIC SUBSTANCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:32 a.m., in room 406, Dirksen Senate Office Building, Hon. Max Baucus, (chairman of the subcommittee) presiding.

Present: Senators Baucus, Symms, and Durenberger.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. The subcommittee will come to order.

The subcommittee is meeting this morning to hear testimony on a subject of national and international importance. Simply stated, should the United States require that economic development projects for other countries meet our own strict environmental standards before we support development loans for these projects?

In essence, should the United States' domestic policies be the guidelines for our foreign policy, especially when it applies to developing nations?

We are only too familiar with the profound global effects of deforestation, loss of productive farmland through substandard agricultural practices, and through poorly conceived hydropower projects. The bottom line is that bad economic development projects result in incalculable human suffering and the destruction of almost irreplaceable natural resources.

Examples abound of projects financed by the international community that have gone seriously awry because of bad planning and poor implementation.

In Botswana, a beef export project backfired, causing widespread desertification and destruction of wildlife populations. The cruelest irony is that despite large exports of beef, 65 percent of that country is now dependent on foreign food aid where once it was self-sufficient.

In Brazil, the Polonoreste project has been an economic and social disaster, with global implications. Thousands of people were

encouraged to relocate as part of a multifaceted development project. The result has been the destruction of rain forests, a failed attempt to farm land unsuited for agriculture, and a displaced and impoverished population.

In light of these and other failures rooted in good intentions, the United States must ask itself what it can do as a member of the World Bank and three regional development banks to constructively influence reforms.

The key word here is "influence." The banks are multilateral institutions, and the United States is but one member. However, it is a major shareholder, and other countries do pay attention to U.S. policies that affect the banks.

A further consideration is the MDB loans are a small part of the development picture in developing nations. We need to look closely at ways to assist these nations to independently develop the expertise to evaluate projects funded through foreign enterprise. Resource exploitation can only be contained through efforts of the countries themselves.

Our colleague, Steve Symms, has proposed using the National Environmental Policy Act as a screening process for proposed MDB loans. Under this plan, a U.S. vote on loans would depend on either an environmental impact statement or an environmental assessment. That is exactly what we require of Federal projects in our own country.

Advocates say that basing our support for loan projects on the same standards we use within our borders is sound policy and that U.S. leadership will garner the support of other donor countries.

Legitimate concerns about how this proposal would affect foreign development programs have been raised. Such a policy shift would surely reach beyond development loan policy. We must closely examine the impact this proposal would have on foreign assistance specifically and U.S. foreign policy generally.

And, from a practical standpoint, we must ask whether the NEPA process can work in this context.

This morning, we have three panels who are well versed in different aspects of this matter. We are especially honored to have a former U.S. Executive Director to the World Bank, Mr. James Burnham. It is important to us to have him give us his views about the implications that apply if the United States adopts more rigorous environmental review of proposed loans.

I look forward to hearing today's testimony. I believe Senator Symms has raised a very important point, and I want to thank all the witnesses who are here today to help us decide how we should best implement, and to what degree we should implement the proposal that is before us.

I see that the author of the amendment has arrived. Senator, do you have a statement to make?

OPENING STATEMENT OF HON. STEVE SYMMS, U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Yes, I do.

Mr. Chairman, first, I want to thank you for your courtesy and cooperation in calling this hearing because it is an issue that I

have had a long interest in, and I know that you did it as a favor to me, and I appreciate it, and I want you to know that and I say that here on the record.

I think that this issue is very, very important. The subcommittee has moved, under your leadership, to address global environmental problems such as ozone depletion. We spent hours in this Congress debating how to restrict the use or production of CFC's in the name of preserving the global environment. But we would be fooling ourselves if we confine our concern to the ozone depletion effects of the CFC's and then assume that the global environment is safe.

A warming of the earth's stratosphere caused by layers of carbon dioxide, CO_2, enveloping the earth like a greenhouse can also lead to ozone depletion. The world's forests play a crucial role in the global cycling of this CO_2. Historically, forests and surface vegetation have tied up large amounts of carbon, limiting the amount available to form CO_2.

Since 1960, however, forest clearing has released between 90 and 180 billion tons of carbon to the atmosphere. The upper bounds of this estimate is equivalent to the total of the entire world's fossil fuel combustion in the last 28 years. Clearly, Mr. Chairman, this problem deserves the committee's attention, and I thank you for doing so.

Unlike our efforts with the Montreal protocol, however, before we can lecture the world on the threat of global deforestation, we must examine the role played by the United States Government. It would be supreme hypocrisy for us to preach against something that our own treasury is financing.

In fact, Mr. Chairman, the United States plays no small role in financing natural resource destruction around the globe. As the largest single contributor to the World Bank Group of multilateral lending institutions, MDB's, and as a participant in a number of other regional development banks, the United States. has had a hand in the clearing of thousands of acres of tropical rain forest, the damming of critical estuaries, and the mass relocation of large numbers of indigent people.

I had considered opening this statement with a long list of environmental disasters that we have financed, but, on second thought, that list illustrates the very reason the hearing is necessary. Every environmental disaster that I would have read off to you today was brought to the world's attention by scrutiny outside the MDB loan review process. In every case, we are aware of the environmental damage because of the policing action of others and not an inherent environmental conscience within the banks or the U.S. Treasury.

So, rather than list the environmental catastrophes that we know of, I have brought a list of agricultural and mineral development loans whose environmental impact yet remains a mystery. It is these loans that worry me.

Mr. Chairman, I have over 29 pages, over 1000 loans here that we have made that there is no way to tell what the environmental impact of any one of those loans might be, let alone their cumulative impact.

There is no way for me to know, as a citizen, to see what environmental policy my tax dollars are promoting. There is no way to

distinguish between sustainable development and non-sustainable, that is, not until the damage has been done.

There is no way to give priority to less environmentally damaging loans, since we don't know which ones those are. Consequently, there is no way to revise loan portfolios so as to encourage more sustainable development.

When farmers wanted to do a $20,000 upgrade of an existing farm to market road in Hamer, Idaho, the Bureau of Land Management completed a comprehensive environmental impact statement. The result of that EIS was that a road improvement plan was approved, but a closure policy was added to protect migrating elk populations.

The committee should note that the pending $400 million loan to finance the Ita hydroelectric project on the Uruguay River in Brazil will not, under current procedures, receive as much environmental consideration.

While I have been critical of NEPA's application to small entrepreneurial activities in the United States, if ever there was a forum which could benefit from consistent, thorough, and public environmental evaluation, it is the MDB loan approval process. Such evaluation would: (1) lead financial institutions to the least environmentally disruptive method of achieving development goals, (2) provide the criteria by which one could access the sustainability of entire lending portfolios, and (3) provide the public with an assurance that their funds are not being used to finance environmental disruption.

The Global Environment Project Institute based in Ketchum, Idaho strongly supports the concept of such an environmental assessment requirement. To quote their testimony:

> Multilateral development banks, funded in part by U.S. tax dollars, have been responsible for tragic environmental and human consequences in the Third World in spite of the fact that the projects . . . were supposed to increase incomes, provide jobs, and raise the standard of living in poor countries. . . . The performance of the MDB's would be greatly improved if they had to prepare environmental assessments similar to those required of all Federal agencies under the National Environmental Policy Act, NEPA.

Mr. Chairman, I request the Global Environment Project Institute's full statement be included in the record at the end of my remarks.

Senator BAUCUS. Without objection.

Senator SYMMS. And please note that my constituents advocate an environmental assessment process similar—and I stress the word "similar"—to the National Environmental Policy Act, NEPA. I believe that there has been some confusion in this area.

NEPA is not a prescriptive statute. It does not prescribe the duties or responsibilities of any particular agency of government. Rather, it is an informational statute requiring that agencies carry out their otherwise prescribed duties in the most environmentally sound and informed manner possible.

Instructing the U.S. Executive Directors how to vote on certain lending proposals, for example, is not within this committee's jurisdiction, at least according to our Senate Parliamentarian. Deciding how informed they should be on the environmental impacts of their decisions, however, is a legitimate duty of this committee as

an extension of our NEPA oversight, again, according to the Parliamentarian.

This informational aspect of NEPA is important. It is my belief that NEPA becomes internalized within bureaucracies only because it requires openness and accessibility to the public. I agree with Patricia Adams, the Director of the Canadian Probe International, quoted in Sierra Magazine. She said:

> The environmental record of the United States yields the inescapable conclusion that information is an important source of power. Armed with information, the public could challenge the value of proposed projects and might be able to prevent environmental disasters before they begin.

Over a month ago, I circulated a proposal to extend NEPA or a NEPA-like evaluation to the United States' decisionmaking process on MDB loans. Since then, there has been considerable speculation as to my motives in making such a suggestion.

Actually, my motives are very clear. I simply suggest that when the United States intends to support a multi-million dollar loan to develop natural resources, it should do so in the presence of information on the environmental effect of that loan. That is all I have advocated, that we act from a position of information.

It has been suggested that such a proposal will require awkward or inappropriate procedures, burdensome paperwork, and impossible deadlines.

It has been suggested that this will violate our international agreements or offend the autonomy of the MDB's.

It has been suggested that such a requirement would detract from the development of the Third World.

It has even been argued that this would somehow convey an imperial attitude on the part of the United States.

Frankly, none of these arguments necessarily proceeds from my suggestion that the United States might want to cast its vote in an informed light. No one has suggested that the World Bank be tasked with the same assessment procedure as is required of the Bureau of Land Management.

Even within our domestic NEPA policy, NEPA applications vary with the agency and the function. The Federal Home Loan Mortgage Bank applied NEPA to its own unique activities which, by the way, are very similar to Treasury's role in the MDB's. Its application is quite different from that of, say, the Federal Highway Administration.

Certainly, a provision can be drafted that sets in motion a NEPA or NEPA-like process within the banks or at Treasury without imposing inapplicable or unworkable requirements. Consider the inverse of my suggestion, that the United States continue to approve loans without information on their environmental impact, even though that impact may include threatening thousands of unique forms of life, deforesting areas the size of Oregon, or cumulatively degrading the entire global environment.

Several executive agencies which already live and work with NEPA have been very helpful in fleshing out this concept. The President's Council on Environmental Quality, the Environmental Protection Agency, and even the State Department have at least given me the courtesy of contacting my office and inquiring about the proposal before expounding on it. In each case, I have received

constructive and beneficial criticism which has been very helpful and which definitely should be incorporated into any eventual committee proposal.

The Treasury Department, however, Mr. Chairman, has obviously made up its mind which is its right to do. They have not provided suggestions. They did not contact my office even before pronouncing strong opposition to this yet non-existent amendment.

I did have the courtesy of a call from Assistant Secretary Meagher, and we had a very open and constructive dialogue on the issue. He volunteered to try to keep a liaison between my office and the Treasury, and for that I am indebted to him.

However, it is obvious to me from what I read in the paper and from what I hear coming from Treasury that Treasury has made up its mind. They are closeminded on the issue at this point, and I hope to be able to open a dialogue with them to assure myself that Treasury will work on this issue in good faith as we are trying to do here in this committee.

While I would much prefer to propose an environmental assessment process that meets with Treasury's approval, I will not postpone action on this pressing issue because of the obstinacy of an agency that is unwilling to discuss the issue in good faith.

I would also like to thank the many interests within the environmental community that have provided positive and constructive suggestions. Nevertheless, there are some who have approached this idea somewhat timidly if not outright antagonistically.

I suppose I shouldn't expect otherwise. These environmental interests will argue that the committee should proceed with caution, addressing MDB lending problems pragmatically, paying due attention to economic necessities and crediting current progress in the area. It will be a pleasure to me, Mr. Chairman, to be on the receiving end of these arguments for once.

However, considering the global environmental stakes at issue now, I will personally see to it that such arguments may return to haunt their authors when this committee debates less pressing environmental issues such as air quality that comes from bakeries in this country.

I thank you very much for your indulgence in allowing me to make this statement. We will look forward to hearing the witnesses, and I would like to say up front I would like to thank all the witnesses for sharing their time and views on this with the committee.

[The statement from the Global Environment Project Institute previously referred to by Senator Symms follows:]

Global Environment
Project Institute

FOR THE HEARING RECORD

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
AMENDEMENT TO S.1792

Senator Symms, thank you for the opportunity to offer comment on your proposed amendment to S. 1792 to extend NEPA requirements to recommendations for the U.S. vote in international financial institutions.

The Global Environment Project Institute, Inc. (GEPI) was formed in December of 1986 to educate the public regarding global environmental issues, primarily overpopulation, natural resource depletion, sustainable economic development, and environmental degradation, and to suggest and direct responsible action by individuals to resolve problems related to those issues.

GEPI emphasizes the connection between global issues and local problems in order to make global concerns relevant to individual's daily lives and to illustrate that the cumulative impact of many individuals taking local action may ameliorate global problems which seriously threaten the quality and survival of life on earth.

GEPI, as the only non-profit organization devoted to global concerns in Idaho, is particularly pleased to be able to commend Idaho's Senator, Steve Symms, for his efforts to improve resource and environmental management in the developing world. Senator Symms'amendment embraces the concept put forth by Prime Minister Bruntland when she suggests that "the need to integrate economic and ecological considerations into development planning will require nothing less than a 'renaissance' in economic decision making."

Multi-lateral development banks (MDBs), funded in part with U.S. tax dollars, have been responsible for tragic environmental and human consequences in the Third World in spite of the fact that the projects approved by MDB's were supposed to increase incomes, provide jobs, and raise the standard of living in poor countries.

GEPI's criticism of MDB practices, however, does not imply that we oppose the purpose for which the banks were established. The developing countries very much need the help of the developed countries. We feel that the United States has a responsibility to create sustainable development projects that will ensure the quality of the human environment worldwide.

P.O. BOX 888 KETCHUM, IDAHO 83340 208-726-4030

According to the Bruntland Report to the World Commission on Environment and Development, "sustainable development is development that meets the needs of the present without compromising the ability of the future generations to meet their own needs."

GEPI agrees with the Natural Resources Defense Council's (NRDC) recommendation and the Symms' amendment that the performance of the MDBs would be greatly improved if they had to prepare environmental assessments similar to those required of all federal agencies under the National Environmental Policy Act (NEPA).

Knowing that an Environmental Impact Statement would be required would cause MDB project designers to take the environmental impact into consideration from the beginning of the process, especially during design and cost-benefit analysis phases.

GEPI is particularly concerned that some form of sanction be retained in Senator Symms' amendment requiring that the US not vote in favor of any MBD-funded project unless the NEPA requirements are satisfied. Accountability is an extremely important factor in the success of this proposal.

In general, we are very supportive of the objectives of this amendment and thank Senator Symms for his foresight in recognizing the important role that the United States can play in the long-term economic stability in the developing world. Sustainable growth is dependent upon each nation achieving its full economic potential, while at the same time enhancing the environmental resource base upon which all sound development depends.

Judith Hawkes

Judith Hawkes, Executive Director
Global Environment Project Institute

May 6, 1988

Senator BAUCUS. Thank you, Senator, for that important statement.

Senators Kasten and Sanford have submitted statements which will be included at this point in the record.

[The statements referred to follow:]

STATEMENT

U.S. SEN. BOB KASTEN

JUNE 16, 1988

Thank you for giving me this opportunity to testify about the potential applications of the National Environmental Policy Act (NEPA) to international activities. I would like to commend Senator Symms for raising the issue before this Committee, and I would like to thank the Committee for arranging this opportunity to discuss the implications of the NEPA -- particularly for multilateral development bank lending.

Through my role on the Foreign Operations Subcommittee of the Appropriations Committee, I have done a lot of work on environmental reform of the multilateral banks. Over the last five years, the Foreign Operations Committee has initiated numerous reforms at these institutions. The chief goal of our work has been to prevent these institutions from financing large-scale, non-sustainable development projects which cause substantial harm to the environment.

We have extensively reformed U.S. domestic law regarding the operation of A.I.D., State Department and Treasury Department mechanisms for overseeing these institutions. We have not tried to duplicate abroad America's own environmental decision-making process, but rather tried to protect foreign nations' basic resources and environments on a much more fundamental level.

The Committee believes that strong local support is necessary if environmental protection efforts are to succeed; this at least has been our experience in the United States. Bearing this in mind, the Committee has carefully avoided trying to apply the same NEPA standards to domestic and foreign programs.

Each of the MDB's is controlled by its member nations and run by a board of directors. On average, the United States contributes 20% to the operation of the MDB's. Recognizing the proportional percentage of control the United States has over each MDB, we cannot simply demand the application of U.S. environmental standards to these institutions. Rather, we must work in cooperation with the other contributor and borrower nations to promote environmental reforms.

Demanding that NEPA be enforced on the MDB's could actually cause serious harm to America's efforts in this regard.

Without American leadership, the multilateral development banks would continue to increase their funding for environmentally harmful projects. However, thanks to the State Department, U.S. A.I.D., and -- most importantly -- the Treasury Department, extensive changes are occurring at each bank. Example: As part of its reorganization last year, the World Bank announced that it would create a new environmental department. Greater attention is being paid to environmental issues in decisions on potential loans.

While I am not satisfied with the progress so far, I believe that some progress is being made in integrating environmental criteria into the decision-making process. Reforms are currently being undertaken at each of the three regional banks.

In dealing with the MDB's, we must always remember that they are culturally complex institutions. Many of the officials who run them did not grow up with the environmental awareness that we have. While we see environmental protection as an essential component of economic development, many bank officials view the two as competing interests.

Our job in promoting environmentally sustainable development is not just to oppose U.S. participation in environmentally damaging projects, but to cooperate with the banks themselves, borrower nations and sponsor nations to promote sensitivity to the environment.

Our efforts are beginning to bear fruit. This summer we expect the first European nation to adopt U.S.-style environmental guidelines for bank voting instructions. In addition, the U.S. is now sharing the information developed in our "early warning system," which identifies potentially destructive projects. This information is now being used by sponsor nations to shape instructions to their MDB board representatives.

Most important of all, however, is the support we are getting from borrower nations. In recent years, I have received extensive correspondence from environmental groups in developing countries. Encouraging the development of a healthy environmental community at the local level is essential -- and is a major accomplishment. Through these efforts, I think we can eventually succeed in reforming the multilateral development banks.

We ought to keep the pressure on the banks until they pay adequate attention to environmental concerns and the preservation of the natural resource base in their client nations. Withdrawing from or significantly restricting U.S. participation in these banks would forsake our extraordinary opportunity to help preserve the world's natural bounty.

Future generations -- especially in the less-developed countries -- are counting on us to exercise responsible environmental stewardship. This is one job we can't defer to our successors, and I thank this Committee for giving me an opportunity to discuss my view of our responsibilities.

# # #

STATEMENT OF SENATOR TERRY SANFORD

HEARING BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

U.S. SENATE

JUNE 16, 1988

Mr. Chairman, I appreciate the opportunity to present my views to this committee on an amendment to be proposed by Senator Symms to legislation reauthorizing the National Environmental Policy Act. It is my understanding that the Symms amendment would require the Treasury Department to prepare an Environmental Impact Statement (EIS) in accordance with NEPA standards for each loan or technical assistance proposal being considered by any of the multilateral development banks in which the United States is a participating member, and would also require the United States to vote in opposition to any loan or project if an Environmental Impact Statement is not prepared in accordance with NEPA standards.

I question whether the Symms amendment is workable and whether it would meet its intended goal of promoting environmentally sustainable development. I recently chaired two very informative hearings before the Foreign Relations

of the initial project analysis, but Congress must persist in its efforts through the MDBs to change the process by which projects are analyzed.

The Symms amendment is also troubling in the jurisdictional issues it would raise relating to the Foreign Relations Committee's role in overseeing multilateral development banks. Much of what has been done so far to promote environmentally sustainable growth has come through efforts made by the Foreign Relations committee in performing its oversight role. As previously stated, to the extent that the amendment affects the United State's right to vote on many loans, this amendment affects the ability of the United States to influence lending policy in a manner that meets the goals set forth by the Administration and the Congress. As the Carter Administration learned in excluding government "votes and other actions in international conferences and organizations" from NEPA coverage through its Executive Order 12114, there are significant foreign policy concerns that must be factored into participation in the multilateral development banks. While I cannot speak for Chairman Pell or the Foreign Relations Committee in general, I am concerned that this amendment may require a referral to the Foreign Relations Committee in order to examine its effect on foreign policy and U.S. participation in the multilateral banks.

I appreciate the opportunity to submit these views to you.

non-governmental organizations in the project preparation process. Additional requirements were placed in the Fiscal Year 1988 funding resolution, including an analysis of debt for conservation swaps, an enhancement of the early-warning system for identifying loans that may have negative environmental consequences, a report on a comprehensive strategy to address natural resource problems, and the encouragement of an IMF requirement to conduct an analysis of the impact of adjustment policies on the environment, public health and natural resources.

As a result, the Treasury Department already has a significant mandate to promote environmentally sustainable development. What is needed now is strict enforcement of that mandate. Complete implementation according to current specifications has not been made in the areas, among others, of: 1) appointment management plan advisors to the President; 2) improving the exchange of information on programs of common interest with non-governmental organizations and among the various lending institutions; and 3) incorporating conservation into the mix of energy/development plans analyzed by the MDBs. In these and many other areas, more progress must be made, but I do not believe applying the NEPA requirements to MDBs will encourage such progress. I am also concerned that the Treasury Department is overly optimistic in believing MDBs will reform themselves and make environmental assessment an integral part

projects designed to assist those countries suffering the most extreme natural resource degradation. The proposed amendment could also result in reducing American influence within the multilateral institutions at a time when U.S. influence is already being diluted by the fact that our ownership share is most institutions is shrinking.

As you know, Mr. Chairman, we have been among the leaders in pressing for needed attention to environmental issues in the MDBs. Yet the proposed amendment would require us to abstain from votes or to vote against projects due to an inability to gather information in a timely manner or inadequate manpower to process such information, rather than from the secure knowledge that a particular proposal is not environmentally sound. Such occurrences would only diminish our ability to continue our leadership on environmental issues.

The Congress has been taking steps, largely though the Foreign Assistance Acts, to mandate the promotion of environmentally sustainable economic growth. In 1987, we required the Secretary of the Treasury to instruct the U.S. Executive Directors of the multilateral development banks to promote a number of very specific reforms, including the hiring of environmental specialists by the development banks, the development of plans for a complete environmental review of projects, and the involvement of environmental and

developing countries be able to perform for themselves the types of assessments NEPA would require. By placing the burden of environmental analysis on the Department of the Treasury, the Symms amendment focuses on the wrong party. Inevitably, the Treasury Department in turn will have to pass some of the burden for environmental assessment on to the applicant countries. I fear that this burden cannot be met by some countries while others may simply resent it.

I believe we must broaden our development focus to include not only particular projects in a developing country but also the development strategy of the country as a whole. With the benefit of an overall view, we can achieve a turnaround in the development process and use an environmentally sound development strategy as a point of departure for an economically feasible plan. By contrast, the Symms amendment will keep the focus on individual projects, rather than on an overall development strategy.

Mr. Chairman, I am concerned about the practical effect of such an amendment on the ability of the United States to address critical development problems in the countries that need our help most. Should we be unable to conduct a timely review of a multilateral development proposal, we would be forced to abstain from voting or to oppose the project. This situation could result in denying American support to important

Subcommittee on International Economic Policy, Trade, Oceans and the Environment on U.S. development assistance and environmentally sustainable development. One hearing focused on the current state of bilateral and multilateral development programs designed to promote environmentally sound development strategies. The other hearing focused specifically on problems in attaining sustainable development paths in Central America. Certainly, the key theme that emerged from these hearings is that overall development strategies in developing nations are not based on sustaining natural resources, and that all too often the long-term environmental implications of a project are considered only as an afterthought, if at all.

While I wholeheartedly support the notion that we must do all we can, and certainly more than we do now, to promote environmentally sound development practices, I do not believe that applying NEPA requirements to the MDBs addresses the fundamental problems these countries face, nor is it a realistic approach. For example, in testimony presented before the Subcommittee in April, one witness highlighted the tremendous need both for multilateral development banks to increase their capacity for addressing the environmental consequences of projects they finance, and for increasing the capability of borrowing countries to assess and manage natural resources effectively by strengthening their personnel, resources, and infrastructure. Only in this way will

Senator BAUCUS. We will now turn to the testimony. I would like to remind everyone that we have a long witness list this morning, and I would ask that the oral statements be limited to 5 minutes each.

We have a system up here of timing lights. When the red light goes on, your time is up.

We will begin with Mr. James Burnham, who is a former executive director of the World Bank. There are various executive directors, as I understand it, to various multi-development lending institutions who have instructions on how to vote on various loans and whose responsibility it is to decide how the United States should vote and which loans are most important to the United States' point of view. Mr. Burnham did hold that position for some time, and we are very honored to have him here to give us insight as to how the process works and his recommendations as to how we might best apply our environmental concerns to multilateral development bank lending programs.

Mr. Burnham?

STATEMENT OF JAMES B. BURNHAM, SENIOR VICE PRESIDENT, MELLON BANK

Mr. BURNHAM. Thank you, Mr. Chairman and members of the subcommittee.

I appreciate the opportunity to appear before you today to discuss various aspects of how the U.S. should address environmental issues at the multilateral development banks. I will submit a full copy of my testimony for the record and simply summarize it here.

Senator BAUCUS. Just for everyone's information, all testimony will be included in the record.

Mr. BURNHAM. Thank you.

I should start by saying that my interest in the issues surrounding development and finance for the underdeveloped countries began with my undergraduate education, a Fulbright Scholarship to Brazil and subsequent public service as well as my private sector activities.

Let me begin by emphasizing that I am not in a position to provide you an up-to-date schematic of exactly how the World Bank factors environmental analysis into its lending decisions. Since I left the Bank in 1985, there has been a substantial increase in the amount of time and resources that it devotes to these questions. Over 40 new staff positions have been created and additional staff years have been added through the substantial consultancy budget.

However, I believe that the description I will share with you this morning should be helpful in your deliberations.

As the largest single shareholder with the largest, freest financial market to assist the bank's own substantial borrowing operations, the U.S. quite properly carries considerable influence with the officers, staff, and other shareholders when it comes to formulating World Bank lending policy.

However, it would be a serious mistake to assume that we have an absolute veto over each and every activity carried out at the Bank nor should we, in my view, strive to achieve such a position, for that could weaken the strength of the Bank in dealing with

would-be borrowers and in mobilizing resources, when needed, from other contributors.

On environmental issues, while I was on the World Bank Board of Executive Directors, there were frequent, useful discussions with staff as well as with other executive directors in both informal settings as well as at the formal deliberations of the Board when specific projects came up for consideration. Such issues as deforestation in Africa and the Amazon, air pollution, and the variety of ecological implications resulting from high dam construction were typical of the topics covered.

I should add that in the documents prepared for board members' consideration, whenever there was a question of an environmental issue, there was always a section devoted specifically to the environmental implications of the project at hand.

I would say in terms of support from other governments for the U.S. Government's expressions of interest or concern (which were frequent,) I would say that the Nordic countries, particularly Sweden, were perhaps the most supportive. But, as a general rule, there was a sense at the Board that if Bank staff had laid out for the borrower the environmental implications or risks of a lending project which otherwise met basic economic rate of return criteria, the bank staff had properly performed its work.

I think at the board there was a proper reluctance to project into other countries the complex value judgments that are frequently involved in strictly domestic environmental controversies.

There are a variety of routes by which a World Bank loan reaches the executive directors for decision. Some projects may have been gestating for years in various ministries and agencies of the borrowing government.

Lending projects undergo a variety of reviews for their economic and technical feasibility, leading to calculations of their economic rate of return. This calculation attempts, with a bit of art as well as science, to estimate the costs and benefits of a particular project over time.

At the same time, as I suggested before, bank staff are instructed to be sensitive to possible environmental implications of lending projects and to consult with relevant experts when the need is indicated. It is my understanding that this internal review process has been considerably intensified over the past year or two, although it is obviously not possible to say at this time whether this step has resulted in better projects and a better use of the bank's resources. It has undoubtedly increased the cost of project preparation, a cost which is borne, to a large extent, by the borrowing member countries.

Let me turn to a more general point.

By definition, the World Bank and the other multilateral development banks are in the business of promoting change, change for the better in terms of the underdeveloped world's standard of living, change in the way they use their natural and human resources. It follows that changes in the environment are going to occur in the development process, whether or not the World Bank is involved.

Most investment in the private as well as the public sector is a highly uncertain business. Even when projected costs and benefits

can be reduced to quantified amounts, the honest estimator knows that a wide range of values surrounds that central estimate.

This problem is particularly true in the case of the developing countries.

Senator BAUCUS. Mr. Burnham, I am going to have to ask you to summarize, if you could, please.

Mr. BURNHAM. It is possible to conceive of a situation where all parties agree on the economic and environmental impacts of a particular project, but they arrive at very different judgments as to its value simply because of the discount factor which is applied to future costs and benefits differs. Poorer countries tend to place a high value on immediate increases in income and a low value on future costs which might gradually come to light.

In my view, the U.S. should not attempt to subject other countries to our view of what the appropriate rate of discount in environmental matters should be unless the issue is of international significance. Indeed, the notion of inserting into the World Bank process the U.S. procedures for environmental analysis strikes me as another manifestation of what I call "environmental imperialism" by a number of well organized groups and their supporters.

The sad but predictable result of this crusade has been to provide trade protectionist lobbies in this country with "clean and green" environmental allies when it comes to controversial multilateral development projects and to pose yet another hurdle for the developing countries.

Thank you.

Senator BAUCUS. Thank you very much. We will get to your more precise points in the discussion time. Thank you, Mr. Burnham, very much.

The next witness is Mr. Fred Smith who is with the Competitive Enterprise Institute.

Mr. Smith?

STATEMENT OF FRED L. SMITH, JR., PRESIDENT, COMPETITIVE ENTERPRISE INSTITUTE

Mr. SMITH. Thank you, Mr. Chairman, Senator Symms, and members of the committee.

I welcome the request to comment on the proposal to extend the NEPA requirements to U.S. decisions regarding multilateral bank loans.

I am Fred Smith. I head the Competitive Enterprise Institute. CEI is a pro-market public interest group, that has been active for some time in both environmental and economic policy areas.

In the environmental area, CEI favors Free Market Environmentalism. Incidentally, this approach was pioneered by the Political Economy Research Center in Senator Baucus' home State of Montana. Free Market Environmentalism argues for the extension of property rights and other voluntary arrangements to advance environmental objectives.

In the economic policy area, CEI opposes subsidies and supports deregulation. Financial lending, the subject today, is an area that CEI has been involved with both at the foreign and the domestic level. Our focus has been on the "moral hazard" problems arising

from political guarantees that loans will be repaid no matter what. The term "moral hazard" refers to the fact that an insured party is less likely to avoid risks and less likely to proceed cautiously.

Whether the moral hazard arises, as in domestic banking, from Federal Deposit Insurance, or, as in international lending, from the willingness of the World Bank to grant foolish loans, the consequences are the same. Capital is diverted from useful into wasteful projects. The world is made poorer; the world environment is threatened.

Since the World Bank has asked the U.S. for an additional $14 billion, we now have the opportunity by extending NEPA to improve our ability to critique the World Bank decisions.

The World Bank particularly needs such criticism. As Lord Peter Bower has pointed out, World Bank loans are loans from governments to governments to build governments. The incentives of political institutions to examine critically the economic and environmental wisdom of its lending policies is very weak. The extension of the NEPA Act would provide somewhat more information on the alleged rationale of World Bank loans and, thus, opportunities for more informed review.

My testimony was submitted for the record. I would also like to submit copies of three other papers: (1) "The Politics of IMF Lending" by Fred L. Smith Jr., (2) "World Bank Snookers U.S. Congress, Again" by Melanie Tammen of the Heritage Institute, and (3) "The World Bank vs. The World's Poor" by Jim Bovard, a CATO and CEI associate.

My testimony argues that there is no necessary conflict between NEPA and the World Bank. NEPA was intended to create and maintain conditions under which man and nature can exist in productive harmony, and advance the social and economic requirements of present and future generations. These goals are compatible with those of the World Bank.

NEPA was enacted in recognition of the fact that the vast program of politically financed investment in the U.S. too often produced minor economic benefits and major environmental costs. The term "pork barrel" is an old American term and one that conveys well the problems of seeking to discipline an inherently political process.

In my testimony, I mention two U.S. examples, the Synfuels Corporation and the Clinch River Breeder Reactor. Let me today add one more example of wasteful pork-barrel spending that arises out of my own childhood.

I grew up in rural Louisiana on the 30-mile Pearl River, a river system that was improved by the Corps of Engineers right after World War II. The Pearl River was one of the few rivers that had not yet been improved, and the Corps was looking for a project. Moreover it was time for the Louisiana delegation to get a piece of pork. The result was the 30-mile Pearl River Lock and Canal system linking the intracoastal canal to Bogalusa.

My daddy was in the Corps of Engineers, became the Lockmaster at Lock Number 1 on the Pearl River, and I grew up on the premises. When the canal was opened (I remember it well), bands played, ribbons were cut, and a barge load of paper products were ceremonially shipped from Bogalusa down the river to some final

market. Speeches were given on how this project would ensure the economic development of the area.

In reality, that barge load was the first and last economic shipment from Bogalusa. The canal was constructed purely as a pork barrel project. Moreover, the canal cut through an area of great environmental sensitivity. The whole purpose of the project was to provide transient economic—and political—benefits.

My Pearl River experience has been repeated often in the United States. The waste and environmental damage is much greater in the Third World. Thus, we need to discipline politically inspired projects. We have begun to discipline such projects in the United States through NEPA. It is time we began to give the Third World the benefits that we have already given ourselves.

I have given examples in the paper of how the NEPA requirement might also encourage the World Bank to consider seriously the way in which property rights and rights to contracts not only promote economic prosperity but also preserve environmental quality.

I mentioned our historical example of the Puritans who experimented with collective land management, quickly found it incompatible with wise land management, and then adopted the private farming system operating today in the United States. The Puritans had no World Bank and thus came early to realize the value of private property. That benefit, again, should be extended to the Third World.

NEPA is no panacea. It is important to realize there is a risk associated with this introduction of NEPA. The risk is that rather than creating a better global environment, that we will merely create a much better environment for global environmentalists. This is a danger, but I think the risk is worth taking.

Senator BAUCUS. Could you please summarize?

Mr. SMITH. I will, yes.

In a world of private lending, there would be little role for the NEPA requirements advocated in this testimony. When risks are borne by private parties, the outcomes tend to advance human economic and environmental welfare.

The purpose of the NEPA requirement is to improve the transparency of a political process, and that, we think, worthwhile. New reporting requirements may well lead to a reduction in the overall quantity of monies transferred from the United States and the developed world to the Third World, but the quality of those loans will be much improved. For that reason, we think NEPA should be extended to this area.

Thank you.

Senator BAUCUS. Thank you, Mr. Smith.

Our next witness is Mr. William Reilly. He is with the World Wildlife Fund and also the Conservation Foundation.

Mr. Reilly?

STATEMENT OF WILLIAM K. REILLY, PRESIDENT, WORLD WILDLIFE FUND AND THE CONSERVATION FOUNDATION

Mr. REILLY. Thank you, Mr. Chairman and Senator Symms.

I appreciate the opportunity to appear before the committee and congratulate both of you on your leadership on this very important issue.

I am President of World Wildlife Fund, which is the largest U.S. conservation organization concerned with the international environment with some 500,000 members. I am also, as you mentioned, President of The Conservation Foundation which is a public policy research organization. We have affiliated our organizations.

As I was coming up here this morning, I was reminded of the fact that the late Senator Jackson's committee, the Interior Committee, back in 1969, asked The Conservation Foundation to provide a consultant to help with the operative language of section 1022(c), the National Environmental Policy Act (NEPA), which became the provision that we are now familiar with calling for environmental impact statements. We did provide that consultant, Professor Lynton Caldwell.

So, we have a long history of exposure and involvement with this Act, this law.

We have significant interest in managing environment and natural resources and protecting biological diversity of developing countries, especially those in the tropics of Latin America, Asia, and Africa, which have so disproportionately large amounts of the world's forests and animal and plant life and also of its poor and hungry and homeless people.

Those two realities set the terms of the drama in world conservation and development. The key to alleviating poverty and protecting biological resources is promoting sustainable development, that is, uniting economic development and conservation goals, avoiding depletion of natural resources on which future economic growth and, in fact, all future human activity fundamentally depends.

The focus of today's hearing, I think, is very important. The application of NEPA to activities of the Agency for International Development marked a turning point in getting development assistance agencies to take environmental concerns more seriously.

Many important strides have already been made, which we enthusiastically welcome. Mr. Conable's leadership at the World Bank, Mr. Iglesias' at the Interamerican Development Bank are particularly noteworthy and encouraging. I think other institutions will take their lead from these enormously influential organizations.

While institutional reforms take time, they have not, in my opinion, gone far enough. Whether NEPA can be applied to the World Bank is the subject of considerable legal debate. Our government has issued guidelines which may not be legally binding.

Regardless, persuasion of other executive directors at multilateral banks is going to be the key, I think, to wise decisions in this area.

It is important to note that U.S. voting power, because of declining contributions, is itself declining. So, I think the focus on guidelines and on voting rights for our representatives to financial institutions is, in itself at least, not sufficient to achieve the objective of uniting development and conservation.

Financial institutions must come to internalize environmental perspectives in their routine operations. It is not just, in my opin-

ion, a matter of review or of sign-off. Attention to incorporating environmental concerns must be at the very earliest stage of project conception.

Congress should request the Secretary of the Treasury to instruct the U.S. executive directors of these institutions on a number of matters which I have detailed in my written testimony and, in sum, are the following:

To review the findings of the World Commission on Environment and Development.

To establish environmental sector loans and review other sector loans with the environment in mine. My own staff in Brazil and in Madagascar have been very impressed by what a difference it has made to the local governments, to their financial ministries, for example, that the World Bank is considering major environmental sector loans to their countries. The Bank has thus validated a whole range of concerns not previously taken nearly as seriously by those ministries.

To review discount rates and other economic formulas to see if they undermine the objective of sustainable development.

To raise broad environmental policy issues in structural adjustment lending negotiations and decisions.

To promote consistent environmental guidelines among multilateral banks.

To seek consistent guidelines, particularly on pesticides, where we notice there is some considerable so-called forum shopping. When the USAID, for example, declines to permit or support the use of a specific pesticide, it is relatively easy and common for a government to proceed to obtain that pesticide from another country or another multilateral bank.

To explore innovative funding mechanisms for urgent environmental projects in countries with substantial biological diversity.

Above all, I think we need to promote among governments and citizens of recipient countries an understanding of the essential role that a healthy environment, healthy natural resources, and sustainable economic development play in achieving economic goals. Perhaps the most important task is to foster in-country capabilities among governments and private conservation groups to become effective partners in conceptualizing, designing, planning, and executing development projects.

We see this at World Wildlife Fund again and again: where you have local leaders who understand, appreciate, are sophisticated about these issues, the problems are reduced many fold.

Senator SYMMS [acting chairman]. Can you summarize your statement, please?

Mr. REILLY. In sum, I think that what we are concerned about here is to promote behavior modification of some major international institutions. That is a very laudable and important objective. I think it is going to take a long time. I think that this hearing and the concerns expressed by this committee and by the Congress generally can play a very large role in achieving that objective.

Thank you, sir.

Senator SYMMS. Thank you very much.

The committee will stand in recess until Senator Baucus returns. We have about 6 or 7 minutes left on the vote, so I am going to run

over and vote, but he may be back before I am. So, excuse me, please.

[Recess taken.]

Senator BAUCUS. The committee will come to order.

I apologize to the witnesses for the delay. There was a vote. I don't think there will be any other votes for some time. Let's hope so, anyway.

We have one more witness on this panel, Mr. Robinson. Mr. Robinson is the Director of the Center for Environmental Legal Studies at Pace University School of Law.

Mr. Robinson?

STATEMENT OF NICHOLAS ROBINSON, DIRECTOR, CENTER FOR ENVIRONMENTAL LEGAL STUDIES, PACE UNIVERSITY SCHOOL OF LAW

Mr. ROBINSON. Thank you, Mr. Chairman.

It is a pleasure to be here. I am a professor of law and have submitted a statement which I understand is incorporated into the record. Annexed to it is part of the Report of the Legal Advisory Committee to the President's Council on Environmental Quality of December, 1971 which addressed the question of NEPA's extraterritorial application.

I was privileged to serve on that Committee by appointment of Russell Train who was then the CEQ chairman. A decade later, I became involved with these kinds of environmental impact statement issues again as the General Counsel and Deputy Commissioner of New York State's Environmental Conservation Department.

We in New York are one of the 25 States that have a law like NEPA at the State level. I would point out that 17 of the 50 States border on another country, and the environmental impact statements that are done in those areas regularly look at impacts abroad across the boundary as well as dealing with impacts in the United States, sometimes from the effects abroad.

Citizens from abroad are allowed under our procedures to intervene in American administrative proceedings to discuss those environmental impacts under our rules.

I have found in the last 10 or 15 years that there is tremendous interest in environmental impact assessment as a technique abroad. It is generally one of the ideas that Congress came up with which has achieved international stature and acceptance.

The Common Market, Western European countries under the Treaty of Rome, are requiring the use of environmental impact assessment in all those nations beginning this coming July. The U.N. Environment Programme has voted on impact assessment guidelines and recommended to all countries, primarily developing countries, that environmental impact assessment be adopted. The Associtaion of Southeast Asian Nations has, by treaty, agreed to establish environmental impact procedures in all those nations. I have just returned from some meetings in the Soviet Union. The Soviets are actively studying it and establishing an environmental impact assessment process as well.

It is an idea, as Senator Symms pointed out, that makes good sense. It works. It can be used.

It does take some extra work. People have to think about the environmental consequences. Environmental baseline data has to be assembled. Agencies not used to NEPA are a little unsure about how to tool up.

I have never seen an agency, which was not an environmental agency, say we would love to accept NEPA. It has been something that the legislative side of our government has said must be done.

The executive agencies reluctantly have learned to do it. Eventually, they become strong advocates of it. Those that do the EIA process find that it is very useful.

Most critics of the process are people who have never done it. I have had to advise an agency on the performance of environmental impact statements and also advise local governments doing the process. I have been an attorney for development interests as well as conservation interests, participating in environmental impact statement procedures. It is an even-handed, good tool that should be used in our international arena.

I will not summarize the legal points I have made in my paper. I believe it is amply clear that the foreign affairs agencies are covered by the National Environmental Policy Act. The environmental assessment procedures do work. AID finds that they work.

I see no conceptual or policy reason why the U.S. participation in the World Bank could not undertake some form of environmental impact assessment.

Since most of the donor nations have already agreed in their domestic legislation to perform environmental impact assessments, to undertake this process, one of the ideas, which is not in my prepared text but I will suggest now, is that Congress mandate the executive to open discussions with the other donor countries, with our Western European allies, with Japan, to discuss agreeing on some standard policy for environmental impact assessment that might be agreed upon by these nations. They are the ones that fund the development process. Since they perform environmental impact assessment domestically, it seems to me they could ably do it on development aid projects and agree upon procedures as voting members of the World Bank to do it, and this might be a further tool to promote this process.

In summary, I think that the proposal that Senator Symms has made is a useful one. It could either be done gradually through a programmatic or generic EIS in which Treasury would look at all of the impacts of its vote as a way to leverage the World Bank into doing more environmental analysis.

It could be done through grants and training to cultivate the staff capacity both in the World Bank and in some of the recipient nations to do this, but there is every good reason in policy and law under NEPA why the World Bank should begin doing so, and the United States Government should facilitate that process and comply with NEPA.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Mr. Robinson.

Mr. Robinson and Mr. Reilly, you heard Mr. Burnham say—I think he used the words "environmental imperialism." I think in part it is because NEPA generally applies to U.S. agencies, and NEPA has a major impact, that is, American courts have held that

where agencies do not comply with NEPA, the project stops, or may not proceed until the agency complies with NEPA and the EIS, environmental impact statement, is provided.

But those are all within the confines of United States jurisdiction. Isn't it environmental imperialism for the United States Government to say we are going to apply American law not only to Americans and American agencies but also to other countries?

Mr. ROBINSON. I don't think it is, Mr. Chairman. We don't apply American law to the other countries. We constrain ourselves. We tell ourselves that we must not act so as to harm the environment.

When we bankroll disasters, as the expression goes, we are imposing a sloppiness and a negligence in our performance on other peoples, and some of them will live with the damage that is done to the environment abroad for several generations as a result.

The Canadians are very sensitive to the fact that they do not want Americans dictating to the Canadians. Both the Federal Government which has a good and creative environmental impact assessment process, and some provinces have drawn on our experience in the United States to develop a very different, very Canadian, procedure. Canada has found that this is a good policy.

Canadian agencies have also been quite willing to participate in U.S. agency procedures. Consider the fact that while I was at a conference in Warsaw of the Economic Commission for Europe last September, both the Dutch delegate—the Dutch have a very strong environmental impact assessment process that they have implemented—both the Dutch delegate and the Hungarian delegate stood up and said, we think the National Environmental Policy Act provides a wonderful tool, and everything we have learned about it we have learned from the United States, and we are proceeding to institute it.

This is extraordinary. I don't think it is cultural imperialism any more than saying that we live in one biosphere and our scientists around the world tell us the same natural science exists and the same natural phenomena take place. We can study them and come to conclusions based on scientific study about how to avert environmental mishaps.

Senator BAUCUS. What about that, Mr. Burnham? We are attempting to encourage other countries to sign a treaty on the reduction of chlorofluorocarbons. That was American initiative primarily, and I hope that the President raises the matter in Toronto this weekend and encourage other countries to sign the treaty.

The fact is that the world is getting smaller, that we all live in this world together, that deforestation does have an adverse effect upon peoples not only in Brazil or other tropical forest countries but also upon us in America and other peoples in the world.

What is wrong with this simple requirement that an environmental impact statement or, more simply yet, an environmental assessment be required of the U.S. Government or the lending agencies before a decision is made whether to proceed with the loan? What is wrong with just asking for the information?

Mr. BURNHAM. First of all, that information frequently is asked for by the executive directors. It is provided to the executive directors and, as a matter of course, it is normally, when relevant to a project, included in the project documents that are available to the

executive directors and available to the Treasury Department and other agencies of the executive.

So, the fact is that when there are environmental issues involved people are trying to look at these, within the resources that the bank and its borrowing members have. It seems to me—the debate is being presented as a procedural issue. I don't believe it is a procedural issue.

I think it is, fundamentally, the notion that the rate of discount of a highly developed prosperous country, the U.S., Canada, Sweden, or whatever, should be applied to future costs and benefits to economic projects that are associated with very, very poor countries which have citizens who have very immediate needs and desires.

Senator BAUCUS. Well, without prejudging the issue, that is, the decision of whether or not to vote for the loan—because there are lots of different criteria, lots of different factors, lots of different considerations in whether or not the United States' executive director votes for a certain loan or not—but before reaching that question, again, what is wrong with at least requiring the executive director to have an EA or an EIA, whichever seems more appropriate, before him before he casts that vote based upon environmental considerations and a host of other considerations?

Before I ask that, I would just like to ask you a factual question. Do American executive directors today have an environmental assessment or an environmental impact statement before them?

Mr. BURNHAM. As I say, I have not had direct access to World Bank documents for a couple of years. In terms of a particular project, there are rough assessments that are made at various levels of the staff within the World Bank. One can review these documents from time to time——

Senator BAUCUS. But there is no requirement in the law today? Obviously, there is not, because that is the point of the Symms amendment.

Mr. BURNHAM. I would defer to the Treasury Department to tell us exactly what the current situation is.

Senator BAUCUS. Mr. Robinson, your idea of various donor countries working out environmental standards is a suggestion that would be in addition to a requirement that an environmental assessment or an environmental impact statement be available to executive directors?

Mr. ROBINSON. Yes. I think it could be additional to or if you decide you are going to develop the evolution of this more gradually, it could be a step along the road toward that.

Clearly, there is now experience among most of the donor countries in environmental impact assessment, and since their domestic legislation mandates it and they have largely all voted for it in the context of the guidelines of the U.N. Environment Programme, I think their policies are in accord with ours on that question.

What we need to do is bring the policies into a more applied setting at the level of the multilateral development banks.

Senator BAUCUS. Isn't this just a question of degree, that is, American law obviously does not have the same full force and effect on other countries as it does in America but, yet, we are

coming closer together as a people environmentally, and we have to work out some environmental solutions.

So, isn't this just a question of degree as to how far we move along this track in order to encourage not only American decision making but foreign decision making to address environmental as well as economic concerns?

Mr. BURNHAM. Mr. Chairman, I would just make the point, though, that there are other members of the World Bank who are the borrowing members who are paying the costs of these loans, who are paying the administration, who are subject to the interminable delays in loan processing and such. They are the ones who ultimately are supposed to be the ones who make the value judgments about rates of discount, in my mind.

Mr. SMITH. I have much sympathy for Mr. Burnham's concern over ecological imperialism. CEI favors this step because good economic policies are highly correlated with good environmental policy. That realization has led, in the United States, to effective working coalitions of traditional environmental groups and free market groups. Those coalitions have challenged various federal projects as bad environmental policy and bad economic policy.

The United States is a rich country. Bad policy is just wasteful here. But when a Third World country squanders its wealth, we not only waste money, we destroy the hopes and dreams of the peoples of these nations. The coalitions that have allowed us to discipline projects here have the potential to work at the international level. We should ask other countries to follow our lead in this area. We should also condition further U.S. payments to the World Bank so no U.S. payments would be made to organizations violating U.S. guidelines. We could pull back the monies we are now giving and reduce the damage to there nations. There is no reason for U.S. taxpayers to be subsidizing the environmental and economic destruction of the Third World.

Senator BAUCUS. Mr. Reilly?

Mr. REILLY. Mr. Chairman, I think we ought to make a distinction in applying the procedures of the National Environmental Policy Act in the way that they have evolved and we have become familiar with them in the United States—that is, with a draft statement and a period of using comment and public hearings very often, the possibility of the Freedom of Information Act, judicial review—many of these features which are not contained in the European Community's directive that will become effective next month.

If we make that distinction, as Senator Symms suggested in his opening statement, I think there is a variety of possibilities for integrating environmental assessment directly within the project reviews of the World Bank where they have to be integrated.

But my second point is that I think we ought to be extremely careful to recognize that neither the theory nor the practice of many of the professionals who will make these decisions, presently at least, comprehends a lot of sensitivity or sympathy for many of the things we are talking about. We really have to approach this as a problem of reform and behavior modification in a way that doesn't end up generating paper merely to comply with requirements.

We have to internalize these reforms, and that is why I concentrated on a number of initiatives that I think the Congress ought to encourage the U.S. executive directors to ask for from the banks.

Senator BAUCUS. Rather than applying NEPA?

Mr. REILLY. Rather than applying NEPA as we have come to be familiar with it in the United States. NEPA, as you know, is a large statute with many provisions that get a lot less attention than the section requiring environmental impact assessment. I think it very commendable and important to apply the policy objectives and goals of NEPA to international activities.

Senator BAUCUS. What about that, Mr. Robinson?

Mr. ROBINSON. Well, I think what we have and what Congress created in the environmental impact process is a series of steps identifying the scope of the impacts, the kinds of studies that are needed, and some form of public participation and sharing of scientific information. Those are the essential elements that internationally have come to be known as environmental impact assessment.

Those are the things we do in California and New York and a number of the other States and at the very local level when we do environmental impact assessments. No one is suggesting that we export American judicial review and litigation to other countries or to the forum of the World Bank, but the key elements of environmental impact assessment could clearly be applied.

One can either do that through requiring Treasury to do it themselves or through promoting the concept through a multilateral vehicle by procedures within the Bank.

Senator BAUCUS. Thank you.

Senator Symms?

Senator SYMMS. Thank you very much, Mr. Chairman.

I want to thank all of you for being here. Mr. Robinson, I am sorry I was voting when you spoke, but I have looked through your statement, and I appreciate your comments very much.

Mr. Smith, your testimony makes a rather strong indictment in a general sense of the multilateral banks in general. As an advocate of the free market, I take it that your r ain objection to the current bank policies is their lack of market incentives. Is that kind of what you are getting at?

Mr. SMITH. Yes. There is a very, very extensive academic literature critiquing the performance of the World Bank on the grounds that it seems ignorant of the overall prerequisites to economic development. Those prerequisites here and throughout the world are property rights, security of contract, and a respect for entrepreneurial achievement.

Unfortunately, the World Bank, throughout its history, has thought of those prerequisites as somehow politically tainted. The Bank expresses no judgments on the relative merits of collectivist or socialist ownership vs, individual or private ownership. The result is that the World Bank has failed to encourage countries to develop rational approaches to economic growth.

Senator SYMMS. I read an interesting analysis of where there was a loan made to produce edible oil out of some kind of a nut in Burma, and Mr. Burnham may know which one I am referring to, and its cost was like three times the cost of what the world edible

oil price was. So, they passed a tariff to stop the outside oil from coming in and lent the money to develop this project at the expense of the consumers in Burma.

Is that the kind of——

Mr. SMITH. The Burma story has been repeated so many times one could laugh. Unfortunately, tears are more appropriate, because the people who are suffering are very poor people.

Brazil has projects that produce steel at two or three times the world price. These mills are not only wasteful economically; they also use far more energy than necessary and, therefore, additional environmental destruction.

The Bank has encouraged countries to invest in project after project to produce materials in surplus on the world markets. The World Bank subsidizes copper production, for example, in Africa making it very difficult for the efficient producers of copper in the United States, Australia, Canada to compete.

Senator SYMMS. I think the word that our copper miners in our part of the United States call that is "political copper." If the price goes down, they mine more of it because they have to have the foreign exchange to meet the bank loan.

Mr. SMITH. That is right. And, as you know, the IMF has lending facilities which, as the price of copper drops, provides additional loans to those Third World producers to hold the price up. All this disconnects the incentives which might lead eventually to some rationalization of World Markets.

Unfortunately, politics has gotten in the way of world economic development. NEPA is a very imperfect tool to address this problem but it can help.

Senator SYMMS. I take it the CEI would support an extension of NEPA basically because of an informational basis. Is that really what your primary——

Mr. SMITH. That is really what we are saying. We think that——

Senator SYMMS. You are saying you want more information available.

Mr. SMITH. Right. We have used the NEPA laws domestically for exactly that purpose, and we have worked with traditional environmental groups along the same lines.

Senator SYMMS. Can you give us any logic in your studies of this of any institutional reason why Treasury would oppose this?

Mr. SMITH. Treasury, like the State Department, likes to have its own pot of money to be disbursed for its own bureaucratic purposes without having to explain its actions to the American taxpayer. There is bureaucratic imperialism as well as ecological imperialism.

Senator SYMMS. Well, Mr. Smith, thank you very much for those answers.

Mr. Burnham, do you want to comment on that?

Mr. BURNHAM. Referring to what, Senator?

Senator SYMMS. About the informational aspects. Is there any institutional reason why Treasury or the World Bank or any of the other banks would somehow want to suppress this potentiality of information on what environmental hazards there are?

For example, look at what is happening to the rain forests in Brazil. Areas as big as Oregon are being cleared. What are the im-

plications to the ozone layer. What are the implications to the rain forest, to the replenishment of the water supply of the world?

Mr. BURNHAM. Well, first of all, I think one should always recognize, particularly in these kinds of situations, that with many environmental calculations, you are dealing with very imprecise models of natural phenomena. They are based on fragmentary data of unknown reliability, and you are dealing with underdeveloped countries where, by definition, the statistical measurements systems are underdeveloped, fragmentary.

So, the quality of the data and stuff that you are going to get back will be of very questionable reliability. We even have problems with data from our own domestic calculations and such.

The second problem has to do with confidentiality issues which are extremely important in the World Bank dealing with member governments, and the information that is supplied to the World Bank is normally done on the basis that it is for bank staff and that distribution into the public, political realm of the United States makes countries very more reluctant to supply good adequate information to World Bank staff.

I think that general issue is extremely important.

Senator SYMMS. Thank you.

Mr. Reilly?

Mr. REILLY. Senator, if I might just comment. As a conservationist, a number of things have been said very negative, very critical about the World Bank and the multilateral banks in general. I think I would say simply that even in view of the very many significant problems that have arisen with bank projects and bank loans, the mission of the bank is extraordinarily important and deserves, I think, a great deal of sensitivity in attempting to change and influence its policies.

The direction of the World Bank, in my opinion, under Mr. Conable, is appropriate and proper. I think we should be very encouraged and should encourage him in the environmental initiatives that he has announced, which involve a whole range of new experiments, large number of new environmental professionals, and new procedures to try to incorporate some of the thinking that you are encouraging into decision making.

I say that simply because I am sure a lot of things will be said, have been said, critical of the bank, and I think the record ought to be clear on one point—that many of us in conservation are very positive, very encouraged about some of the reforms that we are seeing there.

Senator SYMMS. Mr. Robinson, did you want to make any comments on that?

Mr. ROBINSON. Well, I think one of the points that Mr. Burnham made is a strong one. The data base in developing countries is very poor. They don't have what we have with the U.S. Geological Survey. They don't know where to site a plant, where to build a hotel that won't fall into the sea, where to construct a dam that is not subject to improper stresses, seismic or hydrologic or otherwise.

Therefore, more study is needed before we move too far with some of these projects. I think the development of environmental information regarding these projects will result in sustainable de-

velopment which is what the World Bank is supposed to be all about.

Senator SYMMS. Thank you. Thank you all.

Thank you very much, Mr. Chairman.

Senator BAUCUS. I have a lot of questions, but we don't have the time. Thank you all very much for your helpful dissertation this morning.

The next panel will be comprised of the Honorable Alan Hill, Chairman of the Council on Environmental Quality; Mr. R. Augustus Edwards, Deputy Assistant Administrator for External Affairs at the U.S. Environmental Protection Agency; Mr. David Malpass, Deputy Assistant Secretary for Developing Nations at the Department of the Treasury; and William Nitze, Deputy Assistant Secretary of State, Bureau of Oceans and International, Environmental, and Scientific Affairs, the Department of State.

Mr. Hill, we are honored to have you here. You have heard a little bit of discussion of this matter. You may incorporate that in your statement, and you may proceed.

STATEMENT OF HON. A. ALAN HILL, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

Mr. HILL. Thank you.

I will go through the brief, five-minute revision that I made here just this morning.

Senator BAUCUS. Thank you.

Mr. HILL. Thank you very much for the opportunity to testify this morning on the subject of applying NEPA to the United States participation in the actions of international financial institutions.

NEPA's applicability to U.S. actions overseas, whether in the context of bilateral relationships or international institutions, has been the subject of controversy since Congress passed the act in 1969. There is no record in the legislative history of a debate directly on the point of whether NEPA applied to Federal actions occurring outside the territorial jurisdiction of the United States.

In 1971, the issue of NEPA's applicability was considered by the Legal Advisory Committee, as Professor Robinson told this committee. In 1977, President Carter issued an executive order directing CEQ to issue binding regulations to Federal agencies for implementing the procedural provisions of NEPA.

During the course of its work, CEQ identified the issue of NEPA's applicability to Federal actions abroad as an issue which needed to be addressed in a regulatory context. That effort, involving a long and much publicized interagency debate, resulted in the issuance by President Carter of Executive Order 12114 on environmental effects abroad of major Federal activities.

The basic thrust behind development of the executive order was to negotiate a practical approach to the issue which would enable agencies to take into account environmental effects of Federal actions abroad consistent with U.S. economic foreign policy and national security interests while avoiding a direct resolution of the legal issue.

My testimony describes the detailed points in the executive order, and I would like to note that among the exceptions from ap-

plication of the process to American activities abroad were "votes and other actions in international conferences and organizations."

In 1981, the District of Columbia Circuit Court of Appeals faced this issue on a question of a license to export a nuclear plant from the United States to the Philippines. At that time, the area of concern was that the reactor was to be located near an active volcano in a known earthquake zone.

The Department of State prepared an environmental document, but the court found that since there was no clear Congressional direction otherwise, the court decided that NEPA did not apply to the action.

Last October, the general counsel's office at CEQ surveyed all Federal agencies with regard to their compliance with the executive order. Among other things, CEQ asked agencies to provide details about their implementation of the order over the past three years, and I would like to quote from just two of the responses.

The response from the United States Army's Pacific Command stated that "the implementation of the executive order has caused a small increase in cost and some delay in design and construction of facilities. However, the requirements in the executive order have resulted in fewer and less costly problems later on."

The U.S. Coast Guard commented, "we feel it is probably best to consider any action on foreign soil that may have a significant environmental effect the same as if it were in the U.S. and regulated by all U.S. environmental laws. This is generally greeted favorably by foreign host countries."

I do not believe that the NEPA process itself, as interpreted by the CEQ regulations for domestic proposals, is appropriate for use by Federal agencies involved in actions proposed by multilateral institutions. Rather, I believe the United States should be encouraging the development of environmental impact assessment within the framework of the multilateral institutions themselves.

One of the strengths of the NEPA process as applied domestically has been that it is a process which is integrated into the decision making of the government agency which is proposing the action. In the context of multilateral development banks, application of this principle would suggest that the environmental impact assessment process should be implemented by the MDB itself.

Thank you very much, Mr. Chairman.

Senator Symms [Presiding]. Thank you very much, Mr. Hill. We appreciate your testimony and the guidance that you and some of your people have given me which has been very helpful in trying to work on this idea.

Mr. Edwards?

STATEMENT OF R. AUGUSTUS EDWARDS III, DEPUTY ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS, ENVIRONMENTAL PROTECTION AGENCY

Mr. EDWARDS. Thank you, Senator.

I appreciate the opportunity to be here, and I would like to take the liberty of commending you particularly and the subcommittee generally for tackling this important issue. I think we share the same goals.

This country and the EPA, since the passage and the implementation of NEPA, have seen environmental evaluations being woven into the fabric of government initiatives at all levels and in situations where the environmental connection may be real but not obvious. This institutionalization of the consideration of environmental impacts is a development that we at EPA and our colleagues at CEQ have witnessed over the past 18 years. It has not always been easy, but we are convinced beyond any doubt that the quality of Federal decision making is better for having done it.

We now look forward to the evolution of this type of thinking—to its wider acceptance at the international level. However, we believe we have learned much from our domestic experience, enough perhaps to admit that we do not know all the answers.

I would like to proceed to give you our thoughts regarding the application of NEPA-like procedures to international development activities and will conclude with a few general recommendations.

Multilateral development banks provide substantial loans to nations worldwide for large and small development projects, many of which have significant impacts on the environment. Our concern today is whether potential adverse environmental effects, means to mitigate those effects, and possible alternatives are sufficiently assessed before these projects are funded by MDB's.

In the past, MDB's were guided, in many instances, by a narrow interpretation of economic development, but in the long run, all of us now realize economic decisions are sound only if they include adequate consideration of the environment.

In the recent past, there has been a growing awareness of the need to bring proposed projects under environmental scrutiny. A number of projects which have received MDB funding have been criticized as having harmful environmental impacts which, in some cases, also affected the economic viability of the projects.

Over the last few years, several initiatives have been made to better incorporate environmental analysis in project assistance decision making. While I defer to my colleagues from the Departments of State and Treasury to provide details, I understand that the following efforts are being made:

The Working Group for Multinational Assistance, WGMA, where Treasury, AID, and several other agencies participate in the review of about 500 MDB projects a year has been operating over the last decade.

The AID Early Project Notification process was established in 1982 to identify key policy and design issues, including environmental issues, in MDB projects at an early stage. EPA is pleased to be a part of these processes and hopes to be in a position to offer technical advice very early in the project cycle.

The 1987 and 1988 Appropriations Acts required the Secretary of the Treasury to instruct U.S. executive directors of MDB's to vigorously promote MDB commitment to and improve MDB capability to perform environmental reviews.

The Department of State and AID have been required to begin discussions with other donor nations to seek practical ways of adding environmentally trained personnel to regional MDB staffs and to provide resources toward that goal.

Many countries believe the most effective long-term solution is to institutionalize environmental expertise and priorities into MDB bureaucracies. Indeed, our own experience with NEPA suggests this is so. Those making decisions must consider their environmental effects.

Many MDB's, due to increasing awareness of environmental concerns as well as increasing pressure from the U.S. and other countries, have begun to institutionalize consideration of environmental impacts by incorporating those factors into operational manuals or guidelines for bank consideration of projects.

The OECD has developed an environmental checklist for use by donor country decision makers in reviewing loans. EPA participated in this exercise along with Treasury, State, and AID.

The OECD checklist sets forth key environmental factors that should be taken into account by executive directors as they formulate their positions on project applications. This should not only encourage other donor nations to be alert to environmental concerns but also push the MDB's to address those issues. Importantly, it also provides a base on which to build increasingly more effective common review criteria on environmental issues.

EPA believes this type of ongoing consideration of environmental impacts is a needed part of the MDB decision making process. However, we question whether NEPA, specifically, is adaptable to the MDB process or, if it is, whether on its own the United States can cause international communities to accept a legal or institutional NEPA-type process. Many countries are already adopting environmental impact assessment procedures; NEPA is the most comprehensive of these laws, although it is but one example.

The ultimate U.S. objective is to ensure that MDB's implement stronger environmental reviews on proposed projects. We would propose a pilot project that would call for the United States to join with environmental staffs in MDB's, providing advice, technical assistance, training, and education on the conduct of environmental analyses and, by example, cooperatively conduct specific analyses similar to those done by Federal agencies under NEPA but without certain NEPA procedural requirements.

Thank you.

Senator BAUCUS. Thank you very much, Mr. Edwards.

The next witness is David R. Malpass, Deputy Assistant Secretary for Developing Nations, Department of the Treasury.

Mr. Malpass, please proceed.

STATEMENT OF DAVID R. MALPASS, DEPUTY ASSISTANT SECRETARY FOR DEVELOPING NATIONS, DEPARTMENT OF THE TREASURY

Mr. MALPASS. Thank you, Mr. Chairman.

I am pleased to participate this morning in reviewing the environmental reforms at the multilateral development banks. We have had a clear and strong mandate from Congress that we should act through these banks to promote environmentally sustainable economic growth and improved management of natural resources in borrowing countries.

Treasury strongly supports these objectives. Let me begin by summarizing the principal points of that Congressional mandate and then discuss what we have done to implement it in managing U.S. participation in the multilateral development banks.

The first major Congressional mandate for environmental action in the MDB's, which include the World Bank and three regional banks in Asia, Africa, and Latin America, was included in the fiscal year 1987 continuing resolution. This legislation provided that the Secretary of the Treasury should instruct the U.S. executive directors in the banks to promote a number of very specific and detailed reforms.

The reforms are listed on page 2, and I would encourage people to take a look at those, because it is an extensive mandate.

A report detailing progress in these areas was submitted to Congress in January of 1988.

The second major Congressional mandate on the environment was in the fiscal year 1988 continuing resolution. This legislation restated many of the reform objectives outlined in the previous year's continuing resolution and made them a part of the permanent authorizing legislation. It also provided for a number of other initiatives.

The result is the combination of the two listed on page 3, an extensive legislative mandate.

It is clear from this brief summary that a great deal of legislation is already in place. I want to assure you that we are making a conscientious effort to implement it. In fact, I believe we should make implementation our primary objective at this time and not seek the passage of new law on this subject.

At this point, rather than reading my testimony, I would like to list for you first the things that Treasury is doing in the area of the environment and then a number of the things that the MDB's are doing.

In Treasury, one activity that we engage in is the review of individual loans through WGMA, the Working Group on Multilateral Assistance, and the Early Warning System with AID. We also consult with other member countries regarding specific problem loans. We have completed tropical moist rain forest standards with the Natural Resources Defense Council. We are in the process of establishing wetlands criteria.

We meet regularly with other donors and recently met in May to set up an environmental checklist for multilateral and bilateral decision makers of other OECD countries.

We discuss environmental issues regularly at the annual meetings of the MDB's. For example, Secretary Baker has recently participated in environmental discussions both at the African Development Bank and at the World Bank.

We make sure that environmental issues are a key objective on the agendas for the annual meetings for these multilateral development banks. We work regularly with AID and State to review loans and to enhance the early warning system which is unique in the world. It makes the United States the most effective environmentally conscious participant in the multilateral development banks.

We have consulted with other donors regarding seconding, providing additional staff to the multilateral development banks as we, the United States, have been able to do, via AID, I should note. We work regularly with NGO's, non-governmental organizations, including Greenpeace on a specific integrated pest management project in East Africa.

We regularly report to Congress on these activities.

Now I would like to turn for a moment to some of the activities that——

Senator BAUCUS. One moment.

Mr. MALPASS. Well, I will skip, then, in the interest of time, the many activities that the MDB's themselves have taken in order to address the Congressional mandate. Those activities are widespread.

I am going to move to page 9, then, to discuss the NEPA standards themselves.

It has been suggested that an amendment might be offered on the application of NEPA standards to the MDB's. I support, and Treasury does, strict environmental review of MDB projects. However, Treasury would strongly oppose enacting the application of NEPA standards.

We are most effective in the MDB's when we have latitude and can work to enlist the support of other countries on specific issues. I believe the application of NEPA standards would paralyze our ability to act cooperatively and constructively with other member countries.

It would actually reduce our effectiveness in promoting environmental reform in the banks and prevent us from making further progress toward environmental objectives set forth in the legislation. It could also set us back in some of the progress we have been able to make along the lines of what I summarized earlier.

To sum up, Mr. Chairman, I am all in favor of strict environmental review. That is what we have been trying to accomplish under existing legislation, and I believe we have made substantial progress.

The application of NEPA standards would not advance that progress. In my view, it would very likely set back the progress that has already been made.

Thank you.

Senator BAUCUS. Thank you, Mr. Malpass. Your statement and the statement of every other witness will be in the record, so even though there is a short time constraint, the full statement that you have prepared for the committee will be in the record.

Mr. MALPASS. Thank you, Mr. Chairman.

Senator BAUCUS. Thank you.

Mr. Nitze?

STATEMENT OF WILLIAM A. NITZE, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE

Mr. NITZE. Thank you very much, Mr. Chairman.

The Department of State is very happy to have this opportunity to testify before the committee, and we have submitted written testimony for the record.

We, as well as the other agencies from which you have heard this morning, strongly endorse the basic objective of the amendment which has been offered by Senator Symms. We strongly support strengthening the environmental assessment capability of the multilateral development banks themselves and, in the long term, would like to strengthen the environmental assessment capability of the borrowing countries.

Ultimately, we are not going to get loan projects of sufficient quality unless the countries which are actually proposing those projects for financing in their initial planning process taken environmental sustainability into account.

The only question, then, is what are the best means for moving from where we are today towards the ultimate objective of having a strong environmental assessment process in the banks and in the borrowing countries themselves.

For several reasons, we don't believe that the strict application of the National Environmental Policy Act to votes by the U.S. executive director on specific loans is the way to go. First, these loans are not being made by the U.S. Government or by an agency of the Government. They are being made by an MDB which has many shareholders and many participating nations.

I think it is very important, therefore, that whatever environmental assessment process is developed within the MDB's have the approval and support of as many countries as possible participating in the MDB, not only the developed countries—the Scandinavians, the Europeans, ourselves, the Japanese—but also the developing countries which are a very important MDB constituency.

At this point, to impose all requirements which are very much tailored for our own political and social system on the MDB's, it seems to me, might set back that process. It is much better, in my view, that we work closely with other donor nations, and with the developing countries, to improve the environmental assessment process within the MDB's and not run the risk that an attempt to impose our requirements would be politically resisted and seen as an attempt for us to impose our own political system on institutions which are really multilateral in nature.

Now, the State Department is already deeply involved in a number of activities which are designed to move towards the objective I have just mentioned. We are working closely with AID, Treasury, and other agencies in implementing the early warning system which you have heard about.

We participate actively in the Working Group on Multilateral Assistance in assessing particular loan applications. We have taken the initiative in discussing strengthening environmental assessment with other major donor nations. I have personally met with representatives of the United Kingdom, France, the Federal Republic of Germany. I hope to extend those meetings to other nations.

We are active in promoting the environmental assessment concept and its implementation within the OECD. We have been a strong supporter of the development of environmental guidelines within the OECD.

We are encouraged by the progress that the World Bank, in particular, has made in strengthening the environmental assessment process. Mr. Conable has taken strong leadership. I have met with Mr. Ken Piddington who is the new head of the Environment Department at the World Bank. I have spoken to a number of people on different geographic desks within the World Bank.

Although they are not fully there yet, they are genuinely moving. It seems to me that perhaps the top priority should be to get the regional MDB's to advance to the stage at which the World Bank already finds itself.

Finally, I would like briefly to mention what we see as a longer-term future objective. You heard from Mr. Reilly about the desirability of the World Bank not just lending for development per se but for lending for sustainable development and even beyond sustainable development, focusing on the sustainability aspect.

The World Bank is uniquely situated to make loans with a very long-term perspective which aids the borrowing country in developing its infrastructure, its institutions, so that long-term environmental consequences can be taken into account. It seems to me this has to be one of our ultimate objectives.

Another long-term objective has to be integrating developing countries' own development strategies with lending by the MDB's, with United States and other developed countries' development assistance programs, with private financing by private banks and private sector corporations, and, finally and very importantly, with the activities of various non-governmental organizations, some of which you have already heard from and some of which you will hear from in the future.

Thank you.

Senator BAUCUS. Thank you, Mr. Nitze.

Senator Durenberger was here earlier, and he wanted the Chair to mention his interest in the issue. He is now involved in negotiations with welfare reform, ongoing negotiations which I hope will conclude today.

Mr. Hill, precisely how far would you go in applying NEPA to MDB loans?

As I listen to all the witnesses, I tend to hear an agreement in the abstract with the Symms proposition but some disagreement with the Symms amendment in the concrete, that is, there are variations here among the witnesses as to how far we should go. A previous panelist, I think, said we should go all the way. I think that was Professor Robinson.

How far do you think we should go in applying NEPA? There are various gradations or degrees.

Mr. HILL. Let me use as an analogy the NEPA process in our country now where agencies make their own decision as to classes of actions for which there will be nothing done. They are categorically excluded. These are generally minor, repetitive actions, typically replacing culverts on a road system in part of a national forest, that type of thing.

There is an exception, however. If a decision maker knows there will be a significant environmental impact from one, then it is triggered through the other part of the process in which an environ-

mental assessment is done and the decision as to go or no go on the full blown environmental impact statement.

Senator BAUCUS. And how long does it take to prepare that EA, environmental assessment, generally?

Mr. HILL. Two weeks to sixty days.

Senator BAUCUS. I thank you.

Mr. HILL. The reason I am bringing this example up is I believe that this process must grow from the banks themselves, and as they go through the process, they should be deciding what classes of actions would require a full blown environmental impact assessment or whatever we want to call it rather than an outside body, such as the United States, saying it must be this, this, and this. It should flow from within the organization.

Senator BAUCUS. Correct me if I am wrong, but isn't that the process today under NEPA, the agency makes the decision?

Mr. HILL. Yes. They will bring in the list of categorically excluded activities. They will publish that in the Federal Register and get public comments on that before they finalize it.

Senator BAUCUS. Therefore, so far, as we are going down the road here, you would apply NEPA to MDB loans, so far.

Mr. HILL. Yes.

Senator BAUCUS. Where would you not apply NEPA? What parts of NEPA?

Mr. HILL. I am not an expert on MDB's, but if it is typical of what I have seen in Federal agencies, there is a level of activity beyond which there are not significant environmental impacts. What I am saying is that each of the MDB's should be drawing that threshold or laying that threshold themselves.

Senator BAUCUS. What is wrong with that, Mr. Nitze?

Mr. NITZE. Mr. Chairman, I support the idea that the United States should urge the MDB's to develop a more formal environmental assessment process within the MDB. It seems to me and to the Department that the place where the assessment should take place is within the MDB.

Now, obviously, the U.S. executive director is going to have to cast his vote based on advice he receives from the U.S. Government, Treasury in particular, based on all of the considerations, but——

Senator BAUCUS. Under current law, an agency could contract out the development, at least, of the EIS. I don't know whether they do EA's, but I don't want to get hung up on whether it is within the agency itself.

What you are saying is so far, you think the application of NEPA, at least insofar as requiring environmental assessment is appropriate? Is that what you are saying?

Mr. NITZE. Mr. Chairman, the distinction I am trying to make is asking the Treasury Department or a Treasury Department contractor or some other agency of the U.S. Government to separately prepare an environmental assessment or an EIS before deciding whether or not to vote in favor of the specific project as one member of the governing body of the World Bank or another MDB and requiring the MDB itself or at least urging the MDB itself to develop an environmental assessment which would then be made

available to all of the executive directors or other people who actually would be voting on the project.

Senator BAUCUS. And you favor which alternative?

Mr. NITZE. I favor the latter alternative.

Senator BAUCUS. What jurisdiction do we have to require the latter alternative?

Mr. NITZE. We don't have any legal jurisdiction, Mr. Chairman. I think what we can do, however, is exercise considerable leverage because of our shareholdings in the bank, because of our role as a major donor nation, because of our relationship with other donor nations, and because of a number of bilateral relationships we have with the developing countries that are requesting these loans, and I think that process is well underway.

Senator BAUCUS. Mr. Malpass, you in the conclusion of your statement said that you think, in fact, the Symms amendment will harm our efforts.

Mr. MALPASS. Yes, sir.

Senator BAUCUS. Will hurt our efforts in encouraging countries to pay more attention to environmental concerns. I didn't quite understand why you reached that conclusion or how you reached that conclusion.

Mr. MALPASS. I am sorry if my summary wasn't as clear, perhaps, as the statement. The reason for that has to get into the U.S. influence within the MDB's.

I was listening to the earlier panel, and I would like to explain a little bit how they operate, because I think there is a little bit of misunderstanding on that.

The United States is a minority share-holder in all of the MDB's. Our greatest share is in the Inter-American Development Bank, but it runs down to only 6 percent in the African Development Bank. So, our influence on any particular topic is necessarily limited.

In fact, the effect of our vote in the boards of directors of these organizations is limited as well. The way that we are most effective in the organizations is when we try to bring other members along with us on any particular tonic or issue.

To the extent that other members see the United States as voting mechanically because of a Congressional mandate, as voting for or against something on a basis that is entirely internalized in the U.S. system, they will discount the U.S. participation in the organizations. So, if you were to apply a NEPA standard, a U.S. oriented standard to the calculation of our vote, it would completely eliminate the meaning of our vote, because other members would look at it and say well, the U.S. is voting according to its law. So, it would have no actual feedback to the field where these loans are having an effect.

Senator BAUCUS. If I might on that point, it is my understanding that the requirement of NEPA to Federal agency decision making, at least insofar as an AS or an EIS is required, has the effect of doing the precise opposite, that is, of internalizing those considerations within the Federal agency. The question arises as to the degree to which an agency decides against a decision because the EIS shows significant environmental damage.

Under the law, the agency does not have to directly consider the implication of the EA or EIS. The agency can still go ahead and make the decision. The law just requires that the statement be made available.

Nevertheless, the EA and the EIS do have the effect of internalizing the decision making within the agency. It is not a hard and fast draw the red line effect, it is blurred, and those considerations are internalized.

So, I would think that if an EA were required or to some degree we went down this road that the United States decision would also be internalized. That is, the environmental concerns would also be internalized, and the United States Government would then be negotiating with or at least communicating with the potential borrowing country directly or indirectly, and these things have a way of working themselves out so that the United States response would not be automatic.

There would not be an automatically imposed legislative result, that is, it would be very much in the negotiating process but with an added dimension, an environmental dimension.

Mr. MALPASS. That type of process is actually already going on in that there is a working group that meets weekly where EPA, AID, and other organizations can feed their views into the process. In fact, the views of environmental groups are welcomed in that process.

That process does come up with an environmental assessment—I am talking in small letters—and that provides a very effective means for the United States to work within the organizations.

I think maybe our difference here is in one of priorities. Our priority at this point is to actually get the organizations to use the information that we already have and to get other governments to agree with us and to help develop more information—the United States is already far out in front of other countries within the MDB's in our environmental impact within the organizations.

Again referring back to the previous panel, I heard some discussion of the Dutch representatives being very conscious of environmental situations. That is true, they are. However, number one, they don't have the assessment and review process that the United States does and, number two, they never vote against loans in the organizations on environmental grounds and, number three, they don't make any environmental assessment of MDB loans based on their own domestic law or their own legal considerations.

So, while we can talk about other countries as being environmentally sensitive, they really haven't been as effective in the MDB's as the United States has been.

Senator BAUCUS. Thank you very much.

Senator Symms?

Senator SYMMS. Thank you very much.

Just to pursue that, Mr. Chairman, I think you really got right to what I think is the point I would like to clarify between Mr. Malpass or any of you that might want to comment and certainly Mr. Hill.

I think what my amendment is aiming to do is to allow more informational scrutiny. If it is all internalized, don't you deny the

ability of the informational aspects of it from the internal scrutiny?

Mr. Hill, you are Chairman of the Council on Environmental Quality. What would your view on it be? Isn't that the thrust of what we are trying to get at?

Mr. HILL. That is one of the underlying principles in NEPA, and it also flows through—my testimony, the part I cut out, refers to the United Nations environment program principles and guidelines for environmental impact assessment. That effort took ten years to complete. All 58 member nations of the Governing Council—north, south, east, west, developed, undeveloped, developing—adopted those unanimously.

They call for some basic things: that each country adopt a process, it be an open process, it be a process which allows and encourages public participation, and each country define what is a significantly affecting the environment activity.

Senator SYMMS. But you are saying open process.

Mr. HILL. Open process.

Senator SYMMS. So, ultimately, then, Treasury is going to have to reckon with this.

Mr. HILL. That is why it is going to have to flow from the MDB's. We should be encouraging adoption of the approaches in the goals and principles but working with the other members.

Senator SYMMS. Now, you make the point, Mr. Hill, to discourage applying inappropriate or inapplicable domestic NEPA requirements to an MDB loan.

Mr. HILL. Yes.

Senator SYMMS. Conversely, aren't there some aspects of our NEPA experience that would be very helpful in this process, and if we were to require some sort—a modified version or some version—of a NEPA loan, would that necessarily mean an EIS for every loan? Would it have to?

Mr. HILL. It wouldn't have to, no. It wouldn't necessarily have to. I hesitate to get any more—I know you are trying to get me to be more definite. I hope you understand I am trying not to, because I don't have the expertise to sit here and make a judgment that it should apply to this loan or that loan or the other loan. That should be a process through which the bureaucracy within the MDB comes up and makes those decisions.

Senator SYMMS. Generally speaking, what would be the impacts that would trigger the necessity for an EIS on a loan in a general sense?

Mr. HILL. A significant environmental impact. As I said, using the example of the U.S. Forest Service, replacement of culverts on an existing road system is categorically excluded and does not trigger the process, because we have already done that. If we are building a new road system, we will want to do an assessment first and make a decision whether we need to do an EIS.

That is unique to our country, and I don't know that all those steps have to be in a process that works at a bank.

Senator SYMMS. Mr. Edwards, what pitfalls do you see in an environmental review within an institution that is not made available to the public, in other words, if it is internalized too much within an MDB?

Mr. EDWARDS. Well, I am not sure what mechanisms we would have for requiring the MDB's to reveal all the information that we consider when we review an EIS from a Federal agency. We require publication in the Federal Register, and the Freedom of Information Act allows any citizen to have access to information in the United States.

I don't know how the United States alone could require MDB's to divulge that information or countries where development would take place to do that if they don't have the laws in place in those countries.

Senator SYMMS. Well, based on what Mr. Malpass said then, Mr. Malpass, would not that information have to be supplied to Treasury ultimately if Treasury is going to contribute 10 percent or 20 percent or 30 percent or whatever to the loan?

Mr. MALPASS. There have been attempts in the past on other issues to force the MDB's to do certain things, and what we find is that in operating in an international organization, that is not an approach that works very well. The harder you force, the more the institution can find ways to avoid that.

I am not speaking specifically now on the environment but on economic aspects of loans in general. It would be like trying to force a private commercial bank to disclose everything it knows about a loan that it is in the process of making.

Senator SYMMS. Wasn't the original MDB set-up at the Bretton Woods Agreement and the staff of the MDB originally was to prepare the information for the contributing countries?

Mr. MALPASS. Yes, that is true, and, in fact, we have had good access to documentation including that in the area of environment, and EPA does now through its part in the WGMA process. It is not all the information that the banks would have as they prepare loan documents. Some of the information they have is proprietary or it may be particularly sensitive to a country.

So, I guess my view is that right now, the priority in getting good environmental lending—our priority shouldn't be in having the United States accumulate more data, because we already have a pretty good idea of where there are environmental problems.

Our priority should be on finding effective ways to work in these institutions to get them to—now, I need to clarify—to internalize, meaning to absorb within their system. I don't mean that in the sense of keeping private for themselves but internalized so that they and all their staff understand that environmentally sound loans are also economically sound.

Senator SYMMS. Who, then, would ultimately decide how the United States would vote?

Mr. MALPASS. Right now, the Treasury Department makes that decision based on advice from all the other agencies that participate in WGMA.

Senator SYMMS. Barber Conable does not make that decision?

Mr. MALPASS. I am sorry. Could you repeat the question?

Senator SYMMS. Who determines how the U.S. will vote on any particular loan?

Mr. MALPASS. Barber Conable is the President of the World Bank and, so——

Senator SYMMS. I understand that.

Mr. MALPASS. He does not——

Senator SYMMS. But it is U.S. Treasury then.

Mr. MALPASS. Yes, that is correct.

Senator SYMMS. So, how we decide, then, according to the letter you wrote me, is our own business as a Nation. Our decision as to how we want to vote is our business. It is nobody else's as to——

Mr. MALPASS. That is correct. We base our decision on a loan on an interagency process where environmental factors are considered.

Senator SYMMS. Well, back to the chairman's question about the internalization, then, of the information, if we overdo that—the implication I get from Treasury is that you want Congress to play absolutely no role in this decision process. Is that correct?

Mr. MALPASS. No, that is not right. Congress plays a major role already in environmental considerations within the MDB's. There has been an extensive legislative mandate on which we act daily. My staffing considerations are based on laws on the books.

Senator SYMMS. Then, do you think that some of us are being totally unreasonable to just want to see if there is more environmental information that should be available to Congress, i.e., the country that is putting up the money, about what these environmental implications are?

Mr. MALPASS. I am not aware that we have had a problem in getting information on specific loans. Our frustration, both ours and that of Congress, has been on how we can influence the organizations to do good environmentally sound lending.

If there is a problem with information itself, that is something that we can work on directly with your able staff and with those in the House as well, and we do on a daily basis interact with Congress to get the information. But as far as I know, there hasn't been a real problem in getting information on specific loans. We get that through our AID mission, through extensive interviews with the World Bank and with the other MDB's.

They are, by and large, totally open to us in that we go and talk with them and find out what is going on in specific loans.

Senator SYMMS. Well, thank you very much.

Mr. Chairman, I would like to ask more questions, but I know we have another panel, and I am sure your time is short as is mine. So, for those of you that are here this morning, I may have just a very few questions to submit for the record if that would be acceptable to all of you.

Mr. MALPASS. Senator Symms, if I may also, I would like to say that we are very open to communications with you and your staff and have been. So, I would look forward to that and to those of the chairman as well.

Senator SYMMS. Did you want to make a comment, Mr. Nitze?

Mr. NITZE. Yes, thank you, Senator Symms.

I would certainly agree with you that it is desirable that more information about these projects be made available. I think the place where it is most important that it be made available is in the developing countries themselves which are proposing these projects.

One of our long-term objectives is to build up non-governmental organizations within those countries. It is well and good that

NGO's in this country, along with the Congress and other institutions, take an interest in the environmental quality of these projects. However, if we are to bring about a long-term change which will be beneficial to the LDC's and the world as a whole, it is important that people in their own countries have a chance to participate in the decision making process.

I think, longer-term, if we can strengthen environmental assessments not only within the MDB's but within the proposing countries themselves with a provision that information be made publicly available in those countries, we will have moved further down the road of actually achieving our long-term objective.

Senator SYMMS. Thank you.

Senator BAUCUS. Thank you all very much. We appreciate it.

We will now proceed to our third panel which is our last panel. One witness scheduled to testify, Mr. Bruce Rich of the Environmental Defense Fund, is not here, but his statement will be in the record.

The other panelists are Larry Williams, the International Representative of the Sierra Club; Barbara Bramble, the Director of International Programs for the National Wildlife Federation; and James Barnes, senior attorney of the Environmental Policy Institute.

Mr. Williams, why don't you begin.

STATEMENT OF LARRY WILLIAMS, INTERNATIONAL REPRESENTATIVE, SIERRA CLUB

Mr. WILLIAMS. Thank you.

Mr. Chairman, I should start out by saying that I am somewhat staggered by Mr. Malpass' testimony, and I want to reflect on it. He asserts that the request for information as to the environmental impacts of the MDB projects is really not a major problem for the Treasury Department or for the U.S. Government.

I must take issue with that, because that seems to be the whole problem we face. That is something that we have been trying to deal with for the last four years, and the Congress has been involved through the House Banking Committee and the Appropriations Committees and through the MIGA legislation.

Getting sufficient information on the impact of projects before the U.S. has to cast a vote—that has been the struggle. The Treasury Department has been magnificent working with NGO's, other government agencies, setting up systems, working with AID, and the State Department in trying to search out around the world information on these bank projects.

The early warning system was set up which AID uses through their own missions to track these bank projects. Now, an intelligent person would say, why don't we go down to the World Bank down the street and ask them about their projects? In fact, it is hopeless. You can't do it.

The Treasury Department, at our request when I went to Botswana just recently, asked for an economic study on livestock raising dealing with the Botswana cattle project. The World Bank refused to give it to Treasury or State or AID, and they still refuse to give it to them.

Yet, it is a public document in Botswana. We asked the Minister of Public Lands, and he said well, of course you can have it. It is a public document, and it is right here, and won't you comment on it for us?

Then he wrote us a letter and said we would like all final documents from the Government of Botswana prepared by the World Bank to be available to the public. The World Bank, informally—we are going to make a formal request in conjunction with the Botswana Government—but in informal discussions with staff members of the World Bank we have been told that, if Botswana wants to give us that information, you can ask them. We are not going to give it to you.

So, the whole point of what you are trying to do and what your hearing here today is about is how we get information.

Now, the early warning system is a very imperfect system. We have some MDB 200 to 300 projects that come on the books every year, and we only have one line of information in a monopoly report that the World Bank publishes or the other banks publish describing what the project does and what its impact might be. The mandatory report doesn't even talk about what its impact might be. It just says what the project is.

What we are saying and asking is that a process be set up by which information can be available to the governments that have to vote on these projects, to the NGO's to evaluate them like ourselves, but, equally important if not more so, to the people who are impacted by these projects in the Third World who do not know these projects are coming until the bulldozers arrive. The local NGOs have no participation in the process.

May we suggest that this committee direct CEQ to prepare environmental assistant procedures. Work with Treasury, work with World Bank, work with OECD and the other international organizations over the next year after this legislation passes to develop procedures for the Treasury Department to follow in publishing environmental analyses. That analysis should be available some 60 days before the vote so that donor governments and the interested members of the public can analyze the environmental impact.

Why is that important? Because the World Bank staff gives our executive director the documents two weeks before the vote which often has very inadequate analysis, and two weeks is not enough for any nation to make a decision on the environmental impacts. When a nation is in another part of the globe, it is impossible.

Access to information is what it is all about.

It is our feeling that after the promulgation of the regulations, every project which comes on the books, after that time Treasury should be required to write environmental analysis where appropriate. It takes two years for a bank project to go through the pipeline before the Treasury Department would have to cast its vote. We feel that the banks will provide the environmental information to Treasury and, consequently, to the world, in adequate time for Treasury to comply with the law.

Why should the banks cooperate even though we have only a small percent vote in some banks? Because they cannot afford to not have the U.S. participate in the banks. We don't want the United States not to, participate. Politically, it would be, I think,

impossible for the banks to say the United States is not an important voter and that they will not provide the information to allow Treasury to participate.

What we are talking about here is forcing the banks to do a better job at analyzing the environmental impacts of projects and also to provide the information for analysis by all concerned. We think this is a very excellent way—through a modified NEPA process, an environmental assessment process,—to get at this very critical issue.

Thank you very much.

Senator BAUCUS. Thank you, Mr. Williams.

Ms. Bramble?

STATEMENT OF BARBARA BRAMBLE, DIRECTOR, INTERNATIONAL PROGRAMS, NATIONAL WILDLIFE FEDERATION

Ms. BRAMBLE. Thank you, Mr. Chairman.

I would like to focus, on a different part of the problem than Larry Williams was just talking about. In fact, as some of the earlier witnesses described, in the long run, we are really talking about how to encourage a process of improved environmental assessment in the borrowing countries.

An intermediate step could be to require environmental assessment at the multilateral banks; and an even less important part of the process is environmental analysis by the Treasury Department itself. By the time a project comes to a vote by the executive directors, it is much too late to do anything reasonable or useful about the actual project.

So, while the proposed legislation would be a useful step toward better project analysis, and it is of some value to have more information available for the board vote, as Larry Williams was just describing, let's think a bit about what the long-term goal here is. Would imposing a U.S. statute on that process actually help or hurt?

In some ways, I find myself in an extremely surprising position here this morning—I am agreeing with much of what has been said by officials of this government on the question of whether an amendment to NEPA at this time would actually be a positive step or a negative step.

I have actually worked at CEQ. I have also represented major environmental organizations in this country for at least a decade. I have been involved in environmental litigation from one side of the country to the other; in addition I helped in the negotiation process that led to the UNEP principles and goals for environmental impact analysis which were described earlier.

From all of that experience, I strongly feel that the NEPA process has been incredibly valuable in this country. But what has made the NEPA process effective here is not the environmental impact statement writing procedures themselves. What is important about NEPA is the requirement for public comment, the requirement for the document to be available for a certain period of time before any decisions are made, and the right of citizens to bring government agencies to court if the document is inadequate.

That is what has made NEPA work here. But if you are trying to ensure that something like NEPA can operate in other countries, you will find that U.S. legislation is probably not the right vehicle.

I have discussed with many officials of other governments over the years the value of the environmental impact assessment process. I have had to spend hours convincing them that I don't mean the U.S. NEPA itself, with the EIS requirement and a history of 75,000 law suits. What they need to hear is that environmental impact assessment (EIA) is valuable for government decision making. My goal is that they will eventually begin to do it themselves.

Many countries now do. Brazil and Mexico, for example, have environmental impact statement laws within their own system. And I have talked to several people in each of those countries about legislation such as is proposed here. They say legislation like this wouldn't make any difference to them at all, since they normally would prepare an environmental analysis anyway.

But there are dozens, if not scores, of other countries which are just getting used to this whole idea. The threat of imposing a U.S. law on them would not be helpful at this point.

The reason that this proposal looks like imposing U.S. law on them (which of course we can't do) is because, practically speaking, who else are we really imposing it upon?

Looking at the goal of this legislation, it is something that I have long wanted to see—environmental impact assessment preparation as part of the process of project evaluation for World Bank and other MDB projects. But the key point is at what stage the analysis is done.

If the borrowing countries are doing it themselves, that might have an effect on the project. If the World Bank does the analysis, that might have an effect on bank staff and therefore improve their future recommendations about projects. If Treasury does it, the report can only affect the U.S. vote. That is the least important piece of this whole process.

On the one hand, it really is our nation's right to decide not to vote for projects that are going to damage the environment, cause disease, and increase human misery, which many of the projects funded by some of these institutions have done. So for our narrow national purposes, this legislation gives us a useful tool to decide on votes. But in the end what we are really after is improving the decision making process in the developing countries. Threatening a negative project vote is just a small step in encouraging those changes.

I would like to suggest that there are some alternatives to amending NEPA. One of them would be to legislate a requirement that the United States executive directors promote agreement among all of the donor nations to the MDB's that before an MDB loan can be brought up for a vote, an environmental impact assessment must be prepared by the project proponent, under international standards for environmental impact assessment. Which EIA standards are chosen, OECD or UNEP or something different, doesn't necessarily matter.

The point is that the key concepts of NEPA could be promoted without referring to NEPA itself. This avoids bringing the baggage,

shall we say, of the litigation history of this extremely successful law in the U.S. context. The key pieces to me are——

Senator BAUCUS. I am going to have to ask you to summarize, please.

Ms. BRAMBLE. Yes, I certainly will.

The key pieces of NEPA that we need to promote are: access to information, as Larry Williams described, i.e. public availability of the document in the borrowing country—not so much here in the United States but in the borrowing countries; and consultation of the relevant agencies within the borrowing countries.

I think those elements are in the UNEP principles and goals. An extremely valuable service that this nation could provide to promote those internationally accepted standards, by consensus, among the governments which make up the boards of the multilateral development banks.

Thank you very much.

Senator BAUCUS. Thank you very much.

Before we proceed with Mr. Barnes, I have to leave for another meeting. Senator Symms will preside over the meeting, but I would like the witnesses to know that I will review the record that will be available not only to me but to other members of the committee as well.

I want to thank you all for coming.

Senator SYMMS [presiding]. Thank you very much, Mr. Chairman.

Mr. Barnes?

STATEMENT OF JAMES BARNES, SENIOR ATTORNEY, ENVIRONMENTAL POLICY INSTITUTE

Mr. BARNES. Thank you very much, Mr. Chairman.

I am very pleased to be here this morning on behalf of the Environmental Policy Institute.

Just a brief note about my background. I have represented environmental groups in this country for 18 years now. I was involved in some of the early major NEPA legislation and the litigation that ensued under it, starting with the Alaska Pipeline case, and I also was counsel on the Philippines reactor case which was mentioned earlier, which is a good example of an unfortunate result that could have been stopped had our procedures at the time been seen by our society to fully apply to that activity.

Just as a footnote, that reactor was, of course, finished in the Philippines. It cost about $3 billion, and it will never generate one watt of power for a lot of reasons that could have been avoided.

Turning to the MDB situation, when I looked at the draft that had been prepared for amending paragraph (d) of section 102 of NEPA, I asked myself, what is the ultimate intention of the committee here? Is it to provide a lever and a model for U.S. officials to use in influencing the MDB's or is the intention to have our officials actually carry out these assessments themselves?

I haven't, as yet, gotten a clear reading from talking to various staff people about that.

I have discussed this at some length with Tom Stoel, who testified before your committee on May 10 on behalf of the Natural Resources Defense Council. At that time he submitted, on page 3 of his testimony, a suggested modification to the proposed amendment which would implicitly make clear that it is more of a lever and a model for U.S. officials to use rather than one for U.S. officials to have to carry out. I would commend the committee's attention to his proposed redraft of that amendment to make it more clear that the MDB's themselves are to end up preparing these assessments, with similar contents as under U.S. law, but not in any sense word for word or all the detailed requirements.

Mr. Stoel also commented to the committee on that occasion about the consultation procedures required under NEPA and, in his draft, the language about consultation is not in there. That needs some further work, in my view, because we do have a difficult situation here in trying to apply our ideas in the international context. But I do feel that there is probably some good that can come from the Congress passing an appropriately worded modification to NEPA and then reviewing it in about two years' time, as Mr. Stoel suggested, before it would come fully into effect to see if in fact it has been useful in promoting the MDB's to adopt procedures which, so far—let's be frank—they haven't adopted.

As to the benefits of having this expanded kind of process, we have to look at several categories of beneficiaries. First of all, as almost all the witnesses have mentioned this morning, the people directly affected by the projects in question would be a primary beneficiary.

Right now, these people are the last to know about projects that directly affect their lives and their lands, and that is wrong.

Secondly, we have knowledgeable non-governmental organizations in the international context. These people are basically excluded from the development process as it is carried out by the MDBs at the present time. There are some changes afoot, but as we are talking this morning, not much has really changed, in my view, over the last several years.

Third, you have other governments. Most other governments, as we have heard this morning, don't have any early warning systems about projects of concern. So, they come to these votes ignorance, for the most part.

NGOS have discussed on a number of occasions with these executive directors what information they have available to them, and the answer in almost all cases is whatever the MDB staff provides them. They don't have any independent way at the present time of evaluating a situation as we do because of our very good laws enacted during the last several years, which have assisted our Treasury representatives in many remarkable respects.

Last, we have our own citizens and institutions in this country which, right now, as Larry was mentioning a minute ago — and we could give you a lot of chapters and verses on this, but we don't have access ourselves to information sufficiently in advance to help our government decide what to do on these votes.

So, that is about all I would like to say about that right now, and I know that a number of us, including Mr. Stoel and myself, would

be happy to work with the committee on some further redrafting of this requirement.

Very briefly, I wanted to turn to another item that is even more important from a strictly U.S. standpoint, and that is, what are our agencies doing overseas, often in conjunction with the MDBs, and should they be covered by NEPA?

We have the case of the Bureau of Reclamation right now, which is engaged in what may be a major effort to dam up the Three Gorges section of a major river system in China. We have tried in the NGO community without any success at all to get documents about what our government is doing overseas in this case, and there are lots of other examples that we could turn to.

I think the committee might want to look at this more carefully. At the present time we haven't proposed an amendment, but, again, a number of us would be very happy to discuss this with the staff and members to see if they are interested, because there is no doubt that there are institutions of this government carrying on activities about which we would be shocked if we didn't have access to the information about such activities in our own country.

Thank you, Mr. Chairman.

Senator SYMMS. Thank you very much. I want to thank all of you for your being here and for your cooperation in testifying here this morning.

Mr. Williams, Mr. Barnes touched on the very question that the chairman and I discussed with the previous panel, and that is the question of the informational aspects of if Treasury were in a position or were willing to make more information available, what, for example, could an organization like yours be able to do if in fact the information were available? Do you feel it would be very helpful in the overall process?

Mr. WILLIAMS. I think Barbara Bramble's testimony was right on target in the sense that what you want to do is improve the lending process. You want to improve the projects. That is your ultimate goal.

Having an analysis of what the impacts are going to be and whether there are better alternatives and whether some modifications can be made well in advance, hopefully, will lead to better projects and also lead us away from projects that do harm to indigenous peoples that are affected by these projects. So, that is the goal.

Senator SYMMS. If this information were available, and let's say just in a hypothetical sense that the United States is the most concerned about the question, if Treasury sent the information to your organization, could you then be able to have an impact in some of the other contributing countries, say, in Europe or Asia?

Mr. WILLIAMS. Yes, absolutely. That is very correct.

We would distribute to the other donor nations. We would urge Treasury to do it on their own, and I think they would. We would distribute it to the borrowing country.

Environmental agencies within the borrowing countries don't even know, often, what is being planned for them.

So, that information in the other donor countries, obviously, if they feel there is a problem here, they will be forewarned before it comes to a vote.

Senator SYMMS. Mr. Barnes, do you want to comment on that?

Mr. BARNES. I just want to follow up very briefly on that.

In our various NGO relationships with other entities around the world, both governments and NGOs, the one thing that keeps coming out over and over again is that they are depending upon the very small number of governments in the developed countries that do provide some information about these kinds of things to their own citizens to tell them what is going on. Both non-governmental and, as Larry said, oftentimes, the ministry officials for environment and health in the developing world themselves don't even know what actually is going on in a lot of these projects.

You may recall, in fact, that one of our key reforms in the legislation in the last couple of years is to make certain that the MDBs fully involve the health and environmental ministers in their processes. That hasn't happened yet. They are making some small steps forward there.

So, I think we are in a very good position in countries like the United States and several of the European countries. We need this information in advance—and some people have suggested 60 days. Frankly, I don't think that is enough. I think 120 days is an absolute, rock bottom minimum to think about assimilating the information, analyzing it, and then putting it out to people both in this country and abroad who would have some use for it and could, as a result of receiving it, perhaps make different decisions as to how their countries voted ultimately.

Senator SYMMS. Ms. Bramble?

Ms. BRAMBLE. To augment that, I would give an example. We should be pretty frank about this. Many of the problems that the environment is facing in many borrowing countries are not usually at the behest of the multilateral development banks. Most of the problem projects are devised and applied for by the borrowing countries.

Now, the reason we have been concentrating on the multilateral banks for the last five years is that the banks have a great amount of influence on the kinds of projects that are applied for by the borrowers; they also should be but are not yet a force for the better on environmental policy.

However, it is not that they, in fact, are thinking up all of these horror stories. Some of the destructive projects yes, I am sure, the banks had a hand in formulating. But in most cases, while the banks have had a wrong-headed view of strategies and goals for development, the worst projects came from the borrowers. Another reasons for focusing on the MDBs is that they are usually not willing to stop damaging projects. Also, they are located here in the United States. So, we have a great influence of them.

But, in the long run, we are supporting changes in environmental policy of the borrowing country governments. So the EIA information has to feed into policy debates within the borrowers; what we do with the information about MDB projects is to send it to the environmental groups in those countries.

Senator SYMMS. Well, thank you very much.

It has been my experience that, in many instances, the people in the country are very sensitive to the environmental risks and concerns, but it becomes a government to government issue.

Ms. BRAMBLE. Sort of secret discussion.

Senator SYMMS. And I think that is one of the purposes of the U.S. being the big contributor or the second biggest but always a very large contributor in most of these banks. Obviously, if we don't take the lead on it, it won't be done.

Now, my able staff assistant, Trent Clark, lived in Brazil for two years, and he has indicated to me many times that that was the case in Brazil. The Brazilian people didn't want to be clear cutting and decimating the rain forest, knowing that nothing valuable could be done with the land afterwards. Yet, these projects continue to roll on, financed by treasuries and governments from many of the developed countries around the world for somebody's idea that it would help them.

Another point that we really haven't discussed too much this morning is the further in debt these underdeveloped countries get, then the more of their total income they are forced to pay to service the debt. This then requires them to grow food themselves when the economic record shows that they can usually buy corn and wheat and soybeans that were grown in Iowa much cheaper than they can grow them themselves in many cases.

They could increase their standard of living, but are forced into a situation where, because of the huge debt, the people end up paying a higher price for the basics of life. Unlike Americans who pay 25 percent of their income, on the average, for groceries, they pay 95 percent of their income for higher priced food that we force them to develop and exclude our own agriculture machine from the opportunity to provide it for them.

So, the interface of what happens is not only bad for the environment but, in some cases, bad for trade and bad for the living standards of the very people that we are trying to help.

I want to thank all of you very much and thank all the witnesses and the agencies that prepared and helped us with this hearing and say a special thanks to Chairman Baucus for his willingness to participate and his obvious interest in this issue and his obvious grasp of what the issue is. I am very grateful.

And, as he mentioned, Senator Durenberger is very interested in this, but because of his membership on the Finance Committee, couldn't stay here this morning.

I think this is an issue that we will hear a lot about in the future, and I think we are going to need the guidance of many people, hopefully, including the U.S. Treasury to finalize what this amendment should be so that the goals of what the amendment can be would be appropriate and productive.

On that note, this hearing is adjourned.

[Whereupon, at 11:58 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

[Statements submitted for the record follow:]

ENVIRONMENTAL ISSUES AND THE MULTILATERAL DEVELOPMENT BANKS

Remarks by

James B. Burnham

Former U.S. Executive Director, The World Bank

and

Senior Vice President, Mellon Bank

U.S. Senate

Subcommittee on Hazardous Wastes and Toxic Substances

June 16, 1988

Mr. Chairman, and other members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss various aspects of how the United States should address environmental issues in the context of our membership in the multilateral development banks. I am appearing here primarily in light of my three year's service as the U.S. Executive Director at the World Bank, 1982-1985. However, my interest in the issues surrounding economic development and finance in the developing countries goes back to my undergraduate degree from Princeton and the Woodrow Wilson School of Public and International Affairs, a Fulbright Scholarship to study development in Brazil in the

early 1960s, and subsequent experience in the private sector.

Let me begin by emphasizing that I am not in a position to provide you an up-to-date schematic of exactly how the World Bank, or the other development banks, factors environmental analysis into its lending decisions. There has been a substantial increase in the amount of time and resources that the World Bank devotes to these questions since I left the World Bank in July 1985. Over 40 new staff positions have been created, and additional staff years have been added through the substantial consultancy budget. However, I believe that the general description of World Bank operations and the U.S. role which I am about to share with you should be helpful.

The U.S.Role

The World Bank is owned by its shareholder governments. Unlike many multilateral institutions, however, voting is not on a one-government, one-vote basis. Given the fact that it is a financial institution in the business of lending money, its charter prudently made sure that those who contribute the bulk of its capital resources have voting power proportionate to their financial contributions. Given the Bank's origin, at the end of the Second World War, this makes the United States the largest single shareholder.

although our voting share has declined from well over one-third to less than 20% today.

As the largest single shareholder with the largest, freest financial market to assist the Bank's own substantial borrowing operations, the U.S. quite properly carries considerable influence with the officers, staff and other shareholders when it comes to formulating Bank lending policy. However, it would be a serious mistake to assume that we have an absolute veto over each and every activity carried out at the Bank. Nor should we strive to achieve such a position, for that could weaken the strength of the Bank in dealing with would-be borrowers and in mobilizing resources, when needed, from other contributors.

On environmental issues, while I was on the World Bank Board of Executive Directors there were frequent, useful discussions with staff as well as other Executive Directors, in both informal settings as well as at the formal deliberations of the Board. Such issues as deforestation in Africa and the Amazon, air pollution, and the variety of ecological implications of flooding resulting from high dam construction were typical of the topics covered.

In terms of support from other governments for U.S. expressions of interest or concern, I would say that the Nordic countries, particularly Sweden, were perhaps the most

supportive. But as a general rule, there was a sense at the Board that if Bank staff had laid out for the borrower the environmental implications or risks of a lending project which otherwise met basic economic rate of return critera, the Bank staff had properly performed its work. There was a proper reluctance to project into other countries the complex value judgements that are frequently involved in strictly domestic environmental controversies.

The Lending Process

There are a variety of routes by which an IBRD loan reaches the Executive Directors for decision. Some projects may have been gestating for several years in the various ministries or public agencies of a developing country. Other lending agencies or donors may have been solicited for expressions of interest. If the project involves importing equipment or advanced construction techniques, foreign suppliers may be active in promoting the project, both with the World Bank and member governments whose constituents stand to win export contracts.

More recently, with a substantial portion of the lending program shifting into "structural adjustment lending" or "sector development loans," broader policy based issues - agricultural prices or import tariffs, for example

- have tended to displace attention over contracts and hardware.

Lending projects undergo a variety of reviews for their economic and technical feasibility, leading to calcuations of their "economic rate of return". This calculation attempts, sometimes with a bit of art as well as science, to estimate the costs and benefits of a particular project over time. At the same time, Bank staff are instructed to be sensitive to possible environmental implications of lending projects, and to consult with relevant experts when the need is indicated. It is my understanding that the internal environmental review process has been considerably intensified over the past year or two, although it obviously is not possible at this time to say whether this step has resulted in better projects and a better use of the Bank's resources. It has undoubtedly increased the cost of project preparation, a cost which is borne, to a large extent, by the borrowing member countries.

Weighting Environmental Concerns

By definition, the World Bank and the other multilateral development banks are in the business of promoting change - change for the better in terms of the underdeveloped world's standard of living, change in the way

they use their natural and human resources. It follows that changes in the environment are going to occur in the development process, whether or not the World Bank or other MDBs are involved.

Most investment, in the private as well as the public sector, is a highly uncertain business. Even when projected costs and benefits can be reduced to quantified amounts - pounds produced or dollars of revenue - the honest estimator knows that wide ranges of values surround the central estimate. The problem becomes significantly greater when we are dealing with many environmental calculations, which frequently depend on imprecise models of natural phenomenon based on fragmentary data of unknown reliability. And this problem is raised to a much higher order of difficulty when we are dealing with the developing countries where useful data is even more difficult to obtain. Such considerations should make any attempt to extend the notion of environmental impact statements of significant complexity to the developing countries a highly dubious exercise.

The heart of the matter, however, centers on trying to estimate the probability of uncertain events, to quantify essentially unquantifiable issues (such as the disappearance of an exotic species or the disruption of tribal patterns of hunting), and finally - and most

importantly - to apply a particular rate of discount to future streams of costs and benefits.

It is possible to conceive of a situation where all parties agree on the economic and environmental impacts of a particular project but they arrive at very different judgements as to its value, simply because the discount factor which is applied to future costs and benefits differs. Poorer countries tend to place a high value on immediate increases in income and a low value on future costs which might gradually come to light. Deforestation and overgrazing are fairly well-known examples of this phenomenon and have ample precedents in the economic history of both the U.S. and much of Europe.

I have occasionally wondered what the state of the U.S. economy would be in 1988 if all British investment in the 19th century which wanted to cross the Atlantic had been subjected to today's environmental restrictions and procedures.

In my view, the U.S. should not attempt to subject other countries to our view of what the appropriate rate of discount in environmental matters should be, unless a particular project has costs which extend beyond the borrowing nation's frontiers - which might be the case where air or water pollution was concerned. We should certainly

continue to encourage Bank staff to review, within the limits posed by theory and data, the environmental costs and benefits of projects, and to discuss those with potential borrowers. But the formal extension of U.S. environmental values and official procedures into the World Bank decisionmaking process will do the developing countries little good and further reduce the overall efficiency and effectiveness of the World Bank.

Indeed, such a notion strikes me as another manifestation of an interesting phenomenon in recent years that I call "environmental imperialism" by a number of well organized groups and their supportors. The sad, but predictable result of this crusade has been to provide trade protectionist lobbies in this country with clean "green" environmental allies when it comes to controversial multilateral development bank projects, and to pose yet another hurdle for the developing countries.

COMPETITIVE ENTERPRISE INSTITUTE

EXTENDING THE NATIONAL ENVIRONMENTAL POLICY ACT TO DECISIONS REGARDING THE U.S. VOTES IN INTERNATIONAL FINANCIAL INSTITUTIONS

COMMENTS OF

FRED L. SMITH, JR.

PRESIDENT OF THE

COMPETITIVE ENTERPRISE INSTITUTE

TESTIMONY PREPARED FOR DELIVERY BEFORE THE

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

JUNE 16, 1988

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I would like to thank this Committee for its invitation to comment on the proposed amendment to S. 1792 that would extend the reporting and analysis requirements of the National Environmental Policy Act (NEPA) to U.S. votes on loans granted by the World Bank and other multinational development banks (MDBs). Since the Reagan Administration has asked Congress to approve some $14 billion in new cash and guarantees for the World Bank, it is particularly appropriate that we consider steps such as this one that might improve the prospects that such funds will be well used.

I speak as the head of the Competitive Enterprise Institute (CEI), a pro-market public interest group, active in both the environmental and economic policy areas. In the environmental area, CEI has taken the lead in developing Free Market Environmentalism, an approach based on the realization that rational economic policies tend to advance environmental goals. Free Market Environmentalists argue for an expanded environmental role for voluntary arrangements — by both profit and not-for-profit organizations (Chapter IX of the 1984 Council on Environmental Quality's Annual Report, "Private Provision of Public Amenities" provides many valuable examples of the valuable role such groups already play). Market oriented environmentalists support the valuable role now played by private property and favor the extension of such stewartship arrangements to a wider range of those environmental resources (wildlife, groundwater, western lands) now managed politically. We also favor the enforcement of private voluntary agreements (contracts) and the retargeting of liability rules to again conform to the polluter-pays-principle. Free Market Environmentalists also argue that policy makers are too quick to adopt political solutions to environmental problems. Our analysis indicates many situations in which major government agencies (the Bureau of Land Management, the Forest Service, the Department of Transportation, the Department of the Interior) have created significant environmental damage. (For further information on such "Government Failure" research, contact CEI or the Political Economy Research Center [PERC] in Bozeman, Montana.)

CEI's economic policy work in the area of financial services has focused on the extent to which politics often reduces the viability of economic investments. Domestically, CEI favors reform of federal deposit insurance (in particular, a reduction in the federal subsidy) and further financial service deregulation. The current system of subsidies and restraints, we believe, encourages imprudent lending practices and tends to destabilize the whole financial service industry. For many of the same reasons, CEI opposes similar guarantee/subsidy policies in the international lending field. CEI staff played a leadership role in the 1983 debate over U.S. involvement in the International Monetary Fund (the IMF). An article discussing that debate (see "The Politics of IMF Lending," Cato Journal, Vol. 4, No. 1 (Spring/Summer 1984) is submitted for the record.

In the Cato paper, I characterized the debate between those favoring politics and those favoring the marketplace as follows:

> "One school ... sees the market as a fragile institution requiring the guidance of an impartial and objective government referee to enforce

> order and stability. The alternative view sees the market as both more robust and far more able to correct world financial problems than a political institution. The former views government as a positive force for good in an otherwise self-centered universe; the latter sees government as merely another forum in which self-interest operates, but one that lacks many of the corrective feedback mechanisms of the marketplace. To the former, government is the solution; to the latter, it is the problem."

The debate over the World Bank and its value in promoting world economic development while preserving environmental quality raises these same concerns. As indicated by our name, CEI favors a wider role for voluntary market arrangements.

My comments today focus on the value of extending NEPA reporting requirements to U.S. involvement in international lending institutions. Such mandated disclosure requirements would call attention to the widespread failure by many World Bank loan recipients to respect private property and contracts, and — more importantly -- to the economic and environmental consequences of such failures. Such disclosure requirements are necessary. The Administration has now asked the American taxpayer to provide substantial new funding to the World Bank ($14 billion in cash and guarantees). Taxpayers have a right to know how their money will be spent. Today, that knowledge is extraordinarily difficult to obtain. Even World Bank defenders such as Robert Ayres concedes that "the World Bank is not a noticeably open institution." NEPA reports will open up the process and allow a more informed review process.

BACKGROUND ON WORLD BANK:

A brief history is perhaps in order. The World Bank and the other multinational development banks grew out of the economic meetings following the Second World War. Those meetings led to the creation of three major international economic institutions: the International Monetary Fund (the IMF), the General Agreement on Tariffs and Trade (GATT) and the International Bank for Reconstruction and Development (the World Bank). The IMF was to encourage stable relationships between the currencies of the various countries. GATT was to facilitate open trading arrangements, and the World Bank was to rebuild the war-ravaged economies of the world. All of these institutions are now in disarray. The IMF has become a major threat to the stability of world economy, providing the financial support that makes possible the continuation of policies destructive of both economic and individual liberties throughout the world. GATT succeeded in reducing standard protectionist tariffs to a large degree but has now been overwhelmed by protectionist sentiments sweeping the world and the novel use of non-tariff barriers.

The World Bank has fared no better. The swift recovery of the economies of Europe and Japan soon eliminated the original reason for its original establishment. Seeking new purposes, the Bank turned to the Third World and began to underwrite experiments in socialist development that continue to this day. The havoc created by the World Bank has increased

massively since Robert McNamara's reign (late 1970s to 1981). McNamara apparently guilt-ridden over his role in the Vietnam disaster decided to force feed the Third World into prosperity. The damage done by the well-intended but foolishly naive policies that stemmed from McNamara's leadership were massive.

The result has been a growing range of criticisms of the World Bank across the political spectrum. Conservatives criticize its policies of supporting left wing dictators, an array of fashionable "social consciousness" programs such as population control, and its tendency to ignore the views of the U.S. representatives to the Bank (See, for example, Melannie S. Tammen, "World Bank Snookers U.S. Congress Again," Heritage Backgrounder, No. 649, May 23, 1988). Liberals note the Bank's support of authoritarian regimes and its continued failure to deliver on the poverty reduction promises it makes (see, for example, Erik Eckholm, "The Dispossessed of the Earth: Land Reform and Sustainable Development," Worldwatch Paper 30, Washington D.C., June 1978). Free market groups oppose the failure of the bank to insist on the basic prerequisites of viable economic development -- secure property rights and contracts (see, for example, James Bovard, "The World Bank vs. The World's Poor," Cato Institute Policy Analysis, No. 92, September 28, 1987). Environmentalists note the tendency of the World Bank to adopt (at best) a pork-barrel public works approach to Third World development in which every river should be dammed, every road built, every tree cut and every mine dug (see, for example, Brent Blackwelder, Financing Ecological Destruction, Environmental Policy Institute, Undated). The result is that many groups are now prepared to use the information that would be made available by this new NEPA requirement.

BACKGROUND ON NEPA:

The National Environmental Policy Act is broadly compatible with the goals of the World Bank. NEPA declares that ... "it is the continuing policy of the Federal Government ... to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." The original charter of the World Bank contained language arguing for rational economic development. The NEPA Act was signed into law by President Richard Nixon in January 1970 and, according to the 1984 Council on Environmental Quality report, issued in the "environmental decade."

NEPA was enacted, in part, in recognition of the environmental problems that too often arise from politically determined investment. As implemented and interpreted in a number of court cases, that Act specified that all federal agencies (unless exempted) prepare for public review an Environmental Impact Statement (EIS) detailing the expected consequences of each major policy action. EIS statements have become an important tool in examining the economic and environmental consequences of domestic governmental policy. NEPA -- by forcing an agency to provide information about a wide range of possible impacts of that decision -- improves the ability of interested citizens to respond and react to ongoing government policies. The act of filing an Environmental Impact Statement cannot, of

course, ensure rational decisions; however, it does make the process more transparent and thus easier for others to criticize. Taxpayer and citizen groups are provided additional information about the case for the project and can challenge that logic if they believe it faulty.

The rationale for NEPA grew out of the massive role of the federal government in our economy and the realization that political decisions posed a serious threat to the environment. Environmentalists had begun to realize that the Corps of Engineers tendency to dam every river, channel ever stream, drain every wetland; the Bureau of Land Management's western land and water policies; the Department of Energy's subsidized energy programs; and the major public works projects of the Federal Highway Administration -- all involved major threats to the environment. The absence of economic restraints meant that such projects might continue even if they lost vast sums and did little good. NEPA has been used on many occasions in the policy debate over the wisdom of these and other federal programs.

CEI, I might note, is familiar with the NEPA Act. Indeed, CEI is now engaged in a suit based in part on the failure of the Department of Transportation (DOT) to obey the NEPA reporting requirements. DOT failed to submit data on the safety costs of one of its major regulatory programs, the Corporate Average Fuel Economy (CAFE) standards, possibly because such data would have undermined the political support for this program.

NATURE OF POLITICAL LENDING:

Private investors, of course, make many mistakes. Still such individuals do weigh the costs of a specific project, its anticipated benefits and proceed only if the anticipated benefits outweigh anticipated costs. Since private investors generally face most of the costs of their actions directly, they have every reason to take care. Only in unusual situations would the choices made inflict major costs on third parties. For the most part -- especially when property rights have been extended to the resources at risk -- private decisions advance public purposes.

The contrast with the incentives facing political decision makers making an investment could not be greater. THe costs of a political project are borne by the general taxpayer, not the bureaucrat, while the benefits of the project are generally enjoyed by politically preferred interests. The result is that programs may remain politically popular even if they prove economic and environmental disasters. Indeed, the term "pork barrel" politics was invented to describe such commonplace misinvestments. Examples in the United States include the Synfuels Program and the Clinch River Breeder Reactor programs. In addition, politicians are often afflicted with an Edifice Complex and wish to build the modern equivalent of pyramids to project their fame into the future. New national capitals, airports, highways, dams and universities, major industrial plants -- all have received major funding in many countries from the World Bank. Wise investments in infrastructure are, of course, essential to economic progress. However, when politics rather than economics determines the design and scope of such projects, the benefits often prove illusory, the actual costs far greater than anticipated.

Indeed, the World Bank has supported what amounts to a modern version of the "Cargo Cult," a quasi-religious movement that grew up in the South Pacific after World War II. Islanders had experienced an unexpected boom during the war years as the allies created and then abandoned major bases throughout the region. Since that initial wealth has been accompanied by airplanes, airstrips and hangers, the islanders created models of these realities hoping that these offerings would lure back foreign wealth.

Many of the World Bank programs can best be seen as modern versions of that same confusion of cause and effect. Since the West has a vast public works and social welfare infrastructure -- an elaborate system of highways, canals, power grids, pipelines, ports, schools and universities, welfare programs, large industrial complexes including steel and pulp mills, and copper mines and refineries -- and the West is indeed rich, many politicians have come to believe that simply building such artefacts would make a nation wealthy. This confusion of the results of economic progress with its causes has been disastrous. The World Bank has tended time and time again to place the infrastructure cart before the economic development horse. The tragic consequences of that policy are visible throughout the world.

That tendency to view almost any public works project as inherently worthwhile is very familiar in the U.S. And, of course, the results are worthwhile to the politician who gains a new project for his district. After all, any project will result in transfer payments which provide a temporary boost to the local economy. New spending in the district will create some clear beneficiaries. Moreover, there will be ribbons to be cut when the project is initiated -- even afterwards, if it is ever finished. That the resulting project all too often lies idle afterwards creates few obvious problems for the politician. The costs of such wasted investment are diffuse. The politics of pork place little weight on the intrinsic value of the project and much more weight on its costs -- a more costly project that does little may actually be preferred to a less costly project that generates major economic benefits. After all, these benefits may be dispersed across the economy or go to groups not well organized politically.

In the West, such political misue of scarce capital lowers national productivity and living standards, but we are a wealthy people and such losses are not readily apparent. In the Third World, such misinvestments are far more serious, representing the squandering of the very scarce surplus generated in these nations and thus reducing further the chances that these nations will ever escape poverty. Unfortunately, the likelihood that political lending will prove economically and environmentally disastrous is particularly great in the Third World. In many such countries, the pre-requisites of economic growth -- a climate in which entrepreneurship is encouraged, private property respected, and contracts honored -- are often absent or weak.

For political reasons, the World Bank and the other MNBs have acted as if such factors are irrelevant to economic performance. That is nonsensical as the recent actions of Premier Gorbachev clearly demonstrate. The World Bank does review the economic rationale of a specific loan project, but that review is scarcely the objective, skeptical analysis

required in a world in which many things go wrong and few plans are fully realized. Moreover, that review is largely invisible to outside observers. We must accept their analysis on faith. The NEPA rules will improve this situation.

There is moreover a moral obligation for U.S. citizenry to survey the uses made of their tax dollars by the World Bank. The problems that we have experienced in this country from wasteful politically motivated public works programs will be more serious in the Third World. After all, the relative size of the political sector in many undeveloped countries is much larger than in the U.S. (a primary cause of their poverty) and thus the need for a NEPA style review is even more pressing. Moreover, the linkage between the funds and their use is very indirect. Politicians in the Third World solicit funds from their political counterparts in the World Bank who in turn request periodically that politicians in the U.S. and other developed countries provide additional financial backing. Economic reality is far distant in such a multi-tiered political world and thus there is far less reason to suspect rational investments for World Bank loans. The case for additional information -- for some light to make this process more visible to public criticism — is overwhelming.

AN ASIDE: THE LINKAGE OF ECONOMIC AND ENVIRONMENTAL POLICIES

There is a close linkage between good economic policy and good environmental policy. Secure property and contract rights makes it possible for individuals who care about such things to protect their concerns by fencing off their property from others. Even those concerned only with economic exploitation recognize that their property will have a higher value if they maintain environmental amenities (that fact has led various U.S. resource companies to restore their lands and U.S. property developers to preserve vistas and trees). Similarly, the right of contract makes it possible to protect shared environmental resources by covenants and conservation easements. If such restrictions are not likely to be enforced, they can not protect the environment.

Property rights, in particular, are critical to environmental objectives. Without secure property rights, all resources are at risk and individuals are rationally inclined to approximate the "rape and ruin" caricature of capitalism. What reason is there to restore a mining site if the chances are that the site will be expropriated prior to any ability to recover the costs of this restoration? A world in which property is subject to the vagaries of the moment is a world in which everyone hurries to recover the value of all investments -- a world in which everyone sees the future in highly myoptic terms. It is highly ironic to criticize the market system for short-sightedness when one observes the almost total blindness resulting from political instability.

The misguided experiments with collectivist management schemes are unwise but should not be viewed as some particular obsession of the Third World. The U.S. has experimented with exactly such ownership arrangements throughout its history. Indeed, since the federal government still manages over one-third of the nation's land, these experiments continue. There is much to learn from the U.S. experience. An interesting example from our

early history was the Puritan effort in colonial America to create a community based on "from each according to their ability, to each according to their need" principles. The results of that experiment during the first two years were bleak. Governor Bradford, the leader of the enterprise, noted that collective-farming arrangements were failing to provide adequate incentives for the type of hard work required. Single men had little reason to work long hours when the more advantaged married men rushed home early to wife and hearth. Obviously, the Puritans like most people would have preferred to continue their traditional ways, but Bradford had no World Bank ready to finance the continuation of this noble but hopeless enterprise. As a result, Bradford, instead changed the property rights regime of the Colony and moved toward a system of individual entrepreneurship. As one might have expected that shift was effective. The next year saw the first celebration of Thanksgiving!

The lesson is clear. The absence of a World Bank willing to finance forever a failed experiment greatly benefitted the United States and its citizenry. People were able to preserve their core values, but they were encouraged to adjust their practices if they wished to avoid misery. The presence of the World Bank has changed that fact to the detriment of most Third World countries. The result has been the continuation of destructive economic practices far longer than would otherwise occur and, thus, to much more human misery than necessary. The NEPA requirement would enable more substantive criticisms of these practices to be made earlier by a wider variety of citizens and groups. Such criticisms might even prompt the World Bank to require nations to consider the incentives fostered by their political arrangements. Nothing could do more to harmonize man and nature than such rethinking.

CONCLUSION:

In a world of private lending, there would be little role for the NEPA requirements advocated in this testimony. When risks are borne by private parties, the outcomes tend to advance human welfare. The purpose of the NEPA requirements is to improve the transparency of the decisions made by political institutions and thus to improve the ability of U.S. citizens to understand and critique that decision process. Such criticisms are essential because the incentives to face economic reality are extremely weak at the World Bank. They are weak enough within the various U.S. political agencies now subject to NEPA — and the record of U.S. political investment has been abysmal.

Such new reporting requirements may lead to a reduction in lending to Third World countries, but it will almost certainly lead to an improvement in the quality of such lending. That goal is a worthy one and thus we support this extension of NEPA to the area of international lending.

World Wildlife Fund
The Conservation Foundation

STATEMENT

of
WILLIAM K. REILLY
PRESIDENT
WORLD WILDLIFE FUND
and
THE CONSERVATION FOUNDATION

before the

SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES

of the

Senate Committee on Environment and Public Works

on the

Application of the National Environmental Policy Act
to U.S. Participation in Actions of International
Financial Institutions

June 16, 1988

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Mr. Chairman and Members of the Subcommittee, I appreciate very much the opportunity to appear before you and to present my views on the application of the National Environmental Policy Act to U.S. participation in actions of international financial institutions. I applaud the Subcommittee's initiative. This hearing addresses important issues, indeed ones that may go beyond a legislative remedy.

I am William K. Reilly, President of World Wildlife Fund and The Conservation Foundation, two organizations with substantial interest in the management of the environment and natural resources in the developing world.

World Wildlife Fund is the leading private organization working worldwide to protect endangered wildlife and wildlands. We have 450,000 members in the United States, and about 2 million in our sister WWF national organizations in 23 countries around the world. World Wildlife Fund is a field-oriented organization, supporting individuals and institutions that carry out practical conservation projects on the ground. Our top priority is conservation of tropical forests in Latin America, Asia, and Africa, places that are home to a substantial proportion of the world's animal and plant species. During our 27 years, we have worked in more than 100 countries to sponsor and carry out over 1,300 projects involving a comprehensive array of conservation methods.

The Conservation Foundation is an environmental policy research organization with interests in land conservation and development, public lands management, water resources, pollution control, and environmental dispute resolution. We are perhaps best known for our periodic state of the environment reports, the most comprehensive independent assessments of environmental conditions and trends prepared by a private organization. In Mexico, Costa Rica, and other developing countries, The Conservation Foundation

is helping private conservation groups prepare state of the environment reports for their respective countries. These activities are part of the Foundation's growing international program that provides technical assistance to governmental agencies and private conservation groups in developing countries on a range of natural resource and pollution matters.

Our two organizations affiliated in 1985 in order to combine the field and scientific skills of World Wildlife Fund with the policy analysis and social science skills of The Conservation Foundation. One outcome of the affiliation is The Osborn Center for Economic Development, a joint initiative that seeks to give practical meaning, on the ground and with the help of the people most affected, to the concept of sustainable development. We also are trying to advance the case for environmentally sound economic development in the development community.

The issue before us today is one of great importance: how can we ensure that international financial institutions promote sustainable forms of development?

I want first to address the proposal under consideration -- "applying National Environmental Policy Act (NEPA) authorities to U.S. participation in actions of international financial institutions." I will then turn to the question of what more is needed to achieve the goal of integrating development and conservation, a goal on which I believe there is wide agreement. In my view, as important as environmental reviews and guidelines are, absent more fundamental attention to the way projects are conceived and planned, absent a supportive policy framework in the developing countries, absent environmental awareness and a management capability in these countries, the goal of integrating conservation and development will remain elusive.

My own involvement with NEPA dates from the spring of 1970 when I was one of the first staff members hired by the Council on Environment Quality. As a young lawyer, I was given the task of helping to draft the guidelines for implementing NEPA's provision requiring federal agencies tc prepare environmental impact statements. We gave a great deal of thought to designing a workable, effective system. We defined the key phrases of Section 102(2)(c), "major federal actions," and "significantly affecting the quality of the environment." We consulted closely with Senator Henry Jackson, the legislative author of the provision, and his staff.

Soon the court cases began to accumulate giving to the new law the teeth we are now familiar with. Failure to prepare an environmental impact statement, or an insufficient or defective one, can stop a project cold.

What we have learned from the experience with NEPA, I believe, is that the law aimed at modifying the behavior of the big bureaucracies. And when agencies and their clients internalized its requirements and genuinely tried to do a better job at protecting the environment, integrating NEPA's new goals into their mission, then impact statements reflected this new reality, and rarely were of much use to those outside an agency. In any debate about whether or how to apply NEPA to a program or agency I would advise at the outset, keep your eye on the ball. The object is to cause agencies to take the environment seriously, not to hire a lot of consultants to describe and analyze it to death.

On the international level, the court proceedings that led to application of NEPA to the actions of the United States Agency for International Development (A.I.D.) mark a turning point. Following precedents set by A.I.D., conservationists in the United States have seen a decade of reform in the development community in efforts to unite development and conservation, a

task which is now broadly subsumed under the heading "sustainable development." We must give due recognition to what, in fact, has been accomplished:

o The World Bank, to its credit, has adopted a wide range of measures to improve its environmental performance. These have culminated in a recent decision to require an "environmental" sign-off before any project is approved. The World Bank also created several units, including four regional Environment Divisions, specifically charged with executing the Bank's environmental policies. Moreover, it upgraded its environmental policy and oversight capability by creating a new Environment Department with additional divisions. The World Bank also has added a number of new staff with excellent credentials.

o Following The World Bank's lead, other multilateral development institutions have reviewed their environmental procedures and are in the process of adopting formal measures to assure adequate environmental review of projects. The new president of the Inter-American Development Bank has acted quickly to express greatly increased concern about the environment. His efforts to reach out to non-governmental environmental groups, both in the United States and in Latin America, as potential allies in promoting environmentally sound development, warrant recognition.

o Bilateral aid agencies, which disburse more than $26 billion annually, have also begun to accept that environmental considerations must be incorporated in their decisions; on June 23, 1985 and October 23, 1986 the Council of the Organization for Economic Cooperation and Development (OECD) adopted two recommendations on "Environmental Assessment of Development Assistance Projects and Programmes;" the implementation of these recommendations will be reviewed during 1989.

o A Committee of International Development Institutions on the Environment (CIDIE) was formed to convene multilateral development agencies, and has begun to involve bilateral development agencies as well. CIDIE is holding its ninth annual meeting here in Washington this very week.

Some of the progress to date can be traced, more or less directly, back to the implementation of the NEPA process by A.I.D. While conservationists welcome the evidence that many institutions concerned with economic development are beginning to think about the environmental consequences of their actions, we are concerned that these activities may only run skin deep. In other words, procedures, guidelines, and sign-offs are not by themselves sufficient.

Frankly, this should surprise no one. Think back to the prolonged efforts required to get U.S. government agencies to take environmental matters seriously. Institutional change takes time. And yet, the urgency of some environmental problems requires quick response.

A recent survey of development assistance agencies noted that guidelines for environmental planning and assessment have "proliferated." Continuing improvement of these guidelines is important, to be sure, as are measures to apply them effectively. The highest priority is to ensure that environmental considerations are raised, in fact, at the earliest possible point when it is still possible to raise fundamental questions concerning the desirability of the project itself or the feasibility of alternatives.

Thus, a key question for us today is, even recognizing the significant strides that have been made, how can we ensure that environmental concerns become completely and thoroughly internalized in the routine, day-to-day operations of the

international financial institutions. Only when this happens can we truly say that international financial institutions are taking environmental concerns seriously.

Is application of NEPA a means of achieving this objective? The answer to the NEPA question may be "no." There is legal debate over whether a vote cast by the U.S. Executive Director constitutes a "major federal action" subject to the requirements of NEPA. The U.S. Treasury's communications to the Executive Director are couched in terms of "guidelines." Such "guidelines" can, of course, be taken as instructions but may not be legally binding.

Notwithstanding the "guidelines" that our government issues to guide our representatives to international financial institutions, the aim at the international level is to persuade and negotiate rather than to outvote. It is appropriate to draw attention to a situation that inevitably will have an impact upon the ability of the United States to influence the conduct of international financial bodies. Over the years, the United States contribution to these institutions has fallen steadily in relative terms with a consequent loss in U.S. voting power. The inevitable result is that the United States will have to lead and convince in future years, and the going will be a lot tougher.

We must also be wary of creating an onerous environmental assessment requirement for the Treasury Department, as it prepares voting guidelines, that can only be met by imposing burdens on applicant countries. The Treasury Department has no direct project relationship with the applicant countries and the information generated may or may not prove useful to the country itself; it may often be viewed with resentment and thus have the opposite of the desired effect.

Permit me to draw the Subcommittee's attention to some lessons learned from attempts to apply NEPA requirements in other jurisdictions, specifically in Europe. The Commission of the European Communities proposed a Directive -- a form of international legislation -- that was widely viewed as having been modeled on the U.S. NEPA process. It took some time, however, for this proposal to be adopted for it was necessary to purge the proposal of those aspects that derived uniquely from the U.S. experience. Many European countries, for example, have had a long tradition of land use planning; they had no need to generate much of the base line data that the NEPA process called for. Moreover, because certain projects could only be proposed in places that had previously been designated for such activities, the applicant had less need to justify the proposal in all the detail required under NEPA. At the same time, the European Community had to develop an international law that could be applied to a wide variety of countries, ranging from a common law country with a long tradition of conservation like the United Kingdom, to a country with similar traditions but a very different legal system like the Federal Republic of Germany, to a country like Greece where both traditions and the legal system are quite different. Two characteristics that have been essential to NEPA's effectiveness in the United States -- judicial review and the application of the Freedom of Information Act to the way in which impact statements are prepared and reviewed -- have no analogues in most other countries.

This suggests how difficult it is to transpose our own U.S. prescriptions to other countries. An Act of Congress may not be the solution to the problem before us; indeed, I am persuaded that a legislative act of the U.S. Congress with respect to applying NEPA to international financial institutions runs the risk of promoting surface reform, and may have no standing with international bodies. A clear expression of the desire to see reform <u>without</u> prescription of its form, for example, perhaps through a Joint Resolution, may do more to further the objective.

The World Bank already performs project evaluations; stronger statements of congressional intent or stronger language about environmental review may help the U.S. Treasury Department in its guidelines to our country's Executive Directors. But I submit that this step would be insufficient by itself to accomplish the job of achieving sustainable development.

What is required in The World Bank and in other multilateral banks is to change how all the Executive Directors perceive environmental issues and to strengthen how the staff of the Bank and other international financial institutions approach environmental considerations. A broader perspective is needed, one that reflects an understanding of the tangible economic benefits provided by a healthy natural resource base, for only when this understanding is firmly rooted can development and conservation be united, practically, on the ground, with real long-term benefits to local people and the environment.

The World Bank because of its prestige can have enormous influence on other international financial institutions and bilateral assistance agencies, as well as on the countries of the developed and the less developed world. The World Bank can encourage the governments of less developed countries to see conservation as a requisite for economic progress. No one should doubt that the emergence of this environmental understanding takes time. Political leaders everywhere find it much easier to take a short-term view, which coincides with their tenure in office. Yet benefits from conservation accrue over the long-term.

To foster this understanding and promote sustainable development, Congress can usefully require the Secretary of the Treasury to instruct the U.S. Executive Directors of the multilateral development banks on a number of important matters.

• The end goal of all the programs of The World Bank and other international financial institutions is to achieve sustainable development in the less developed world, both for the good of their citizens and of those in the industrialized world, whose fates are inextricably bound. Many critical steps to further sustainable development are spelled out in the report of the World Commission on Environment and Development, entitled "Our Common Future." Among the recommendations are ones to strengthen international conventions in support of sustainable development and to involve more directly industry and nongovernmental organizations, as well as intergovernmental and regional bodies, in the pursuit of sustainable development.

The Executive Directors should review and promote the far-ranging recommendations of this Commission among their colleagues and the leadership of the multilateral banks to encourage these institutions to use their prestige and influence to develop a broad understanding of the requisites for sustainable development, not merely among environmental specialists but, in particular, among those responsible for economic policy in developing countries.

The Executive Directors should encourage the attention and personal commitment of the highest echelons of the multilateral banks' leadership, including the President and all other Executive Directors. We welcome the initiatives of Mr. Conable at The World Bank and Mr. Iglesias at the Inter-American Development Bank. They will need to continue to devote and increase their attention to these matters if broad institutional change is to be achieved.

• On occasion, projects proposed by less developed countries have been turned down by one development agency, only to be picked up and supported by another. This "forum shopping" is important to developing countries, which value it because of the independence it affords. It is not realistic to attempt to stop

it; but steps do need to be taken to ensure that forum shopping is not used to circumvent environmental concerns. The Executive Directors should be instructed to promote consistent guidelines with respect to environmental reviews by multilateral development banks.

- A recent Conservation Foundation report to A.I.D., among other findings, outlined inconsistent policies among U.S. agencies with respect to the use of pesticides. (A copy of the Committee's Report has been submitted for the record.) Congressman David R. Obey, Chairman of the Foreign Operations Subcommittee of the House Appropriations Committee, in recent hearings asked A.I.D. to develop a plan to implement the report's recommendations to make the policies of U.S. agencies consistent with respect to providing pesticides. Many of the recommendations developed for A.I.D. by the Committee on Health and Environment also apply to the multilateral development banks. The Executive Directors should be instructed to promote consistent policies with respect to pesticides.

- Environmentally sound development projects can pay their own way; in fact, many may prove economically more attractive than traditional projects if planners take account of the environmental cost of non-sustainable projects and the long-term benefits of those projects which do not deplete natural resources. Demonstrating this, however, may require fundamental revisions from current practice in the way natural resources are factored into economic calculations. The Executive Directors should request from The World Bank and other international financial institutions a thorough review of discount rates and related economic calculations to ensure that development projects are planned as sustainable projects.

- The World Bank and other international financial institutions need to assure that environmental concerns are part of the discussions with developing countries on structural adjustment lending in order to minimize any existing or resulting economic misallocations that may have undesirable consequences for the environment. Subsidizing pesticides or cattle ranching can have harmful environmental effects and undermine progress in achieving sustainable development. The Executive Directors should request that multilateral development banks in discussions on structural readjustment lending with developing countries address broad overall policy questions, including environmental policies, under which economic growth plans are conceived and carried forward.

- The Executive Directors should promote the creation of environmental sector loans to strengthen the entire environmental management "infrastructure" of developing nations -- investments in technical training, research facilities, formulation of laws and enforcement capabilities. In this regard, The World Bank's current efforts to negotiate major environmental loans for Brazil and for Madagascar are particularly noteworthy. The Executive Directors also should request from the multilateral development banks reviews of how best to incorporate environmental evaluations in loans by other sectors, for agriculture and for industry, for instance.

- Until these changes are made, innovative ways must be found to fund urgently needed environmental measures, particularly in those countries which contain the most valuable natural resources of the planet, countries like Brazil, Colombia, Indonesia, Madagascar, Mexico, and Zaire. Together, these countries account for half, possibly more, of all species of plant and animal life on earth. Many of these countries are not currently eligible, for example, for World Bank loans at concessionary rates of interest. The Executive Directors should promote a variety of ways to encourage these countries to take steps to protect this diversity for their own and the planet's well-being.

In this regard, let me mention one innovative approach pioneered by World Wildlife Fund, debt-for-nature swaps. (I have submitted for the record the WWF Letter entitled "Debt for Nature Swaps: A New Conservation Tool," which explains this approach and the experience to date.) I know The World Bank is looking at the feasibility of the debt-swap mechanism, and trust it will give serious attention to supporting the concept.

- For all they now do and may do, perhaps the most important role The World Bank and other international financial institutions can play is to foster strong in-country conservation and pollution control capabilities. Even the most carefully applied guidelines of multinational institutions cannot overcome local barriers that impede the integration of environmental considerations into the development processes of developing countries. In some countries agencies charged with carrying out major infrastructure or industrial projects typically do not include environmental protection and resource management considerations among their highest priorities. Many agencies responsible for environmental protection and natural resource conservation are underfunded, understaffed and without adequate technical expertise. Non-governmental organizations generally do not have the resources or expertise to monitor and evaluate development projects or to serve as independent sources of information either to the public or to international development assistance agencies.

Success in integrating environmental protection into the economic development process will depend upon the ability of public and private groups in those countries to play an effective role on the ground, at the very earliest stages of project conception prior to the point at which an environmental review by staff at The World Bank or another institution is triggered.

The Executive Directors should promote the updating of developing country planning and project support to assure that countries seeking World Bank assistance have adequate capabilities to deal with pollution or natural resource management problems. The need may be to assure that countries receiving World Bank assistance have the ability to address environmental problems related either to a proposed project or to economic development generally where environmental factors could impede future economic growth -- mounting sewage disposal or hazardous waste problems, for example.

The delicate task of outsiders, whether multilateral development bank representatives or World Wildlife Fund staff, is to play a catalytic, facilitating role in helping developing country groups become effective participants in the economic development process while assuring that the initiative and solutions so essential for sustainable development come from them, the people and governments themselves.

In my travels abroad and in direct inspection of environmental and natural resource problems in the developing world, in consultations with our conservation partners in Latin America, Asia, and Africa, and in conversations at the highest levels of government in these places, one point is underscored again and again: there is little hope of sustainable economic progress, little hope of husbanding natural resources, little hope of protecting the great diversity of life on earth without the understanding and integral involvement of local people and their government representatives. There is no short cut, there is no quick fix, there is no simple legislative remedy.

Thank you.

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TESTIMONY OF

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AT A HEARING BEFORE

THE SUBCOMMITTEE ON HAZARDOUS WASTE AND TOXIC SUBSTANCES,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE

REGARDING

APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT
TO U.S. PARTICIPATION IN ACTIONS OF
INTERNATIONAL FINANCIAL INSTITUTIONS

ON

June 16, 1988, 9:30 a.m.
Room 4406, Dirksen Senate Office Building

Mr. Chairman:

It is an honor as well as a pleasure to have been invited to appear before you this morning at your hearing on the application of the National Environmental Policy Act ("NEPA")[1] to United States participation in the activities of international financial institutions. The Subcommittee is to be commended for its timeliness in convening these hearings; they come at a time when environmental impact assessment techniques are being instituted throughout the world. Our western European allies, for instance, will begin using environmental impact statements next July under a Directive of the European Community[2] which adapts NEPA to the European legal systems. The World Bank has a keen interest in these matters, which is likely to grow; the new Director of the World Bank's Environment Department, Kenneth Piddington, comes from New Zealand, which established its procedures on "Environmental Impact Reporting and Assessment" in 1974,[3] basing them expressly on U.S. experience under NEPA.[4] Our neighbor Canada has substantial experience with its procedures for environmental impact assessment.[5]

Most significantly, the timeliness of these hearings is underscored by the recent Report of the U.S. Department of the Treasury reporting on implementation of environmental reform in multilateral development banks,[6] submitted in accordance with Congress' directive in Section 539 of P.L. 99-591. This report reflects some progress at the World Bank and other multilateral lending institutions, in response to the increasingly effective Treasury Department proposals that these institutions do more to assure that their development projects abroad are environmental

sound. The report, however, also indicates that much more can be done now.

My testimony this morning will review the fact that the international financial institutions can begin routine environmental impact assessment at once. The technique is proven and established. Treasury could do more to acquaint these institutions with the techniques, and in doing so could secure support of other donor nations such as The Netherlands which have a strong national process patterned on NEPA.'

This testimony is based on my own professional experience with environmental impact statements. I am currently a professor of law and director of the Center for Environmental Legal Studies at Pace University School of Law in White Plains, New York. From 1970-72, I served on the Legal Advisory Committee to the President's Council on Environmental Quality, which advised the Council that NEPA bound all agencies of the U.S. federal government and was international in its scope.[2] As I shall note shortly, the federal courts concurred in this legal judgment. I subsequently helped to develope the "Little NEPA," or state equivalent of NEPA in New York State,[3] and have practiced extensively under both NEPA and New York's act. From 1983-85, as the General Counsel and Deputy Commissioner of the NYS Department of Environmental Conservation, I was responsible for the legal preparation of environmental impact statements and the regulations which guide their preparation within the State of New York. Finally, I have consulted on establishing environmental impact statements abroad as a member of the Commission on Environmental Policy, Law and Administration of the International Union for the

Conservation of Nature and Natural Resources (IUCN). In September of 1987, I was privileged to serve on the U.S.A. Delegation to a U.N. Economic Commission for Europe meeting in Warsaw, Poland, on Environmental Impact Assessment. Since 1973, I have served on U.S. delegations to the Environmental Law consultations with the USSR under the American-Soviet Agreement on Cooperation in the Field of Environmental Protection; these consultations have routinely compared the environmental assessment techniques of these two vast nations. I have just returned from Irkutsk, in Siberia, where I lectured on American environmental protection procedures under the auspices of the U.S. Information Agency. The public participation aspects of environmental impact assessment are being instituted in the USSR with respect to protection of Lake Baikal and new development in the Altai Mountains.

In my judgment there are no legal or technological impediments to prevent the multilateral development banks implementing promptly routine procedures for environmental impact assessment. Indeed, NEPA mandates the Treasury Department to either secure preparation of such studies or to undertake them in order to satisfy Americans that their dollars are not being wasted on environmentally unsound projects. The basis for these judgments is set forth below. I shall first examine Congress' mandate in NEPA for agencies to examine impacts wherever they occur, second review international acceptance of NEPA-like procedures, third review the role of international financial institutions, and finally outline options for further legislation on these matters.

I. International Application of NEPA

For the past 18 years, there has been a growing recognition that in enacting NEPA Congress fashioned an extraordinary and useful new management technique. Like the standardization of procedures such as "generally accepted accounting principles," the methodology for environmental impact assessment (known internationally as "EIA") is a scientifically premised and administratively efficient means of assembling and evaluating the environmental data about a project or program. The discipline of regularly doing this analysis enables decision-makers to anticipate and avoid undesired adverse environmental impacts and to mitigate the unavoidable impacts.

Since EIA is a new procedure, however, most agencies have initially found it difficult to add these newly required steps to their regular decision-making. It takes hard work to redesign decision-making procedures while they are in active use. It can and has been done, however. Agencies such as the U.S. Army Corps of Engineers, the U.S. Forest Service and the Nuclear Regulatory Commission are today outstanding in their compliance with NEPA, although initially they had resisted adding these duties. The foreign affairs agencies, primarily the Agency for International Development (AID) and the Department of State, have implemented NEPA, albeit not a fully as the Army Corps, Forest Service or NRC. In 1981, the Environmental Law Institute evaluated the status of compliance with NEPA by each of these five agencies and fourteen others.[1]

When Congress first considered NEPA, it had examples before it in 1969 of costly foreign assistance projects which failed because of

unanticipated environmental consequences. In 1968, fifty case studies on unintended environmental degradation caused by development abroad had been presented at a conference at Airlie House in Warrenton, Virginia.[11] Professor Lynton K. Caldwell, later an advisor to Senator Henry Jackson who was instrumental in shaping the draft of NEPA, presented a paper on "An Ecological Approach to International Development."

Partially as a result of this Airlie House conference, NEPA was purposefully structured in Section 102(2)(C) to apply to "all" federal agencies. Foreign affairs agencies were included. The first Council on Environmental Quality appointed a Legal Advisory Committee drawn from lawyers across the nation; in 1971, the Committee unanimously concluded that Section 102(2)(C) applied to actions of any federal agencies anywhere, even those "carried out within the territorial jurisdiction of another nation."[12] The Committee's Report, where relevant to this question, is attached to this testimony as Appendix A.

Despite a consensus of legal opinion that NEPA applied to the foreign affairs agencies, some still resisted compliance with NEPA. Scholarly opinion favored compliance.[13] The U.S. side of the US-Canada International Joint Commission and of the US-Mexico International Boundary and Water Commission complied with NEPA at the outset.[14] Ultimately, however, the courts were obliged to instruct several foreign affairs agencies to comply with NEPA.

The Sierra Club and others sued the Atomic Energy Commission ("AEC"), State Department and Export-Import Bank, to compel preparation of an environmental impact statement for the export of

nuclear power generating systems and fuels. The AEC agreed to prepare an EIS and State Department conceded that NEPA applied to it. In 1974, the District Court concluded that Section 102(2)(C) applied to the Eximbank, but that since the AEC was lead agency the Eximbank did not need to also prepare an EIS.[15] This suit was followed by an order of District Judge Sirica approving a stipulation by which AID agreed to establish its procedures to implement Section 102(2)(C) of NEPA and to prepare an environmental impact statement on its pesticide management programs.[16]

Thereafter, three decisions clarified the Federal Highway Administration's duty to prepare an environmental impact statement for the construction of a stretch of the Pan-American Highway in Panama and Columbia through the Darien Gap region.[17] The Sierra Club, the Cattlemen's Association, and others sued to require evaluation of the effects of aftosa (hoof and mouth disease) which could be transported from South American to North America; the District Court found that aftosa could destroy up to 25% of the livestock in North America. The Federal Highway Administration prepared an EIS as ordered by the District Court. The Circuit Court found the EIS acceptable under NEPA, without ruling on the direct applicability of NEPA to the Administration's project in Panama.[18] Professor Dan Tarlock, commenting on the litigation,[19] observed that NEPA Section 102(2)(F) mandated federal agencies to support "where consistent with the foreign policy of the United States...initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment."[20] Professor Tarlock

conservatively endorsed NEPA's application abroad.

Other cases have been consistent with these decisions. In Wilderness Society v. Morton,[31] the D.C. Circuit Court allowed Canadians to intervene in the Alaska pipeline litigation in order to press for the evaluation of impacts in Canada. "NEPA provides foreign nationals with certain rights when their environment is endangered by federal actions."[32] Suits regarding the Pacific Trust territories also deemed that NEPA applied to federal agency actions outside the United States.[33]

In light of this caselaw, the Ford Administration in a Memorandum from CEQ Chairman Russell Peterson advised all federal agencies that "NEPA requires analysis and disclosure in environmental impact statements of significant impacts of federal actions on the human environment - in the United States, and other countries, and in areas outside the jurisdiction of any country."[34] The newly elected Carter Administration chose to reconsider this interpretation.[35] During the Carter Administration, the State Department prepared an EIS on the Panama Canal Treaties, a NOAA prepared one on hurricane seeding and that AID had found the NEPA process actually of great benefit. AID reported to President Carter's Office of Management and Budget as follows:[36]

> "Our overall experience is a positive one. We have discovered that developing countries themselves have come increasingly to recognize the interrelated nature of environment and development and to seek to ensure that environmental considerations are adequately addressed in development projects. Further, the practical experience of AID has been that it is possible to undertake detailed environmental analysis of U.S. supported projects abroad and that the results obtained are useful to us, as well as to host country planners, in making project decisions."

8

As a result of its review, the Carter Administration in 1977 issued Executive Order 12114, on the "Environmental Affects Abroad of Major Federal Actions."[17] This Order requires agencies to consider impacts on the commons and on countries affected by the U.S. federal action other than the country seeking the U.S. action. The U.S. lead agency may prepare a bilateral or a multilateral environmental analysis. The Order exempts votes and other actions in international organizations.[18]

Since the promulgation of the Executive order, one court has considered the application of NEPA abroad. The D.C. Circuit Court of Appeals upheld an NRC decision not to examine the siting of a Westinghouse nuclear generating facility in the Philippines when approving an export license for a commercial atomic power reactor, since the State Department had prepared its EIA document (a "concise environmental review") under its own procedures in accordance with the Executive Order.[19]

This evaluation demonstrates that the weight of opinion is that EIA can be done and frequently is done for federal actions abroad, and that NEPA mandates the evaluation. The early fear that foreign states might consider such assessment as meddling in their internal affairs has not been realized. In fact, the developing nations increasingly have come to ask that EIA be provided.[20]

II. International Acceptance of EIA

Since many nations now require the use of EIA, or are establishing such procedures, there is no legal impediment or policy rationale for U.S. federal agencies or international financial institutions to resist preparation of environmental assessments. These developments

confirm Senator Henry Jackson's prognosis that NEPA would find acceptance and should apply internationally "because the problems of the environment do not, for the most part, raise questions related to ideology, national security and the balance of world power."[31]

Since the nations of the European Community will all institute EIA procedures next July at the latest, and since Japan has established its own EIA procedures,[32] most donor nations employ EIA. Most recipient nations have endorsed EIA by voting on the EIA proposals of the United Nations Environment Programme ("UNEP"). UNEP's Governing Council has adopted a set of "Goals and Principles of Environmental Assessment."[33] The United States also supported this UNEP recommendation of EIA procedures. The UNEP recommendations expressly provide that the environmental assessment must consider data to determine the impact on the environment of any other nation or areas such as the oceans beyond any national jurisdiction.[34]

The Association of South East Asian Nations ("ASEAN") in 1985 concluded a comprehensive treaty on protection of the environment in the region. This treaty provides that each nation shall undertake EIA procedures.[35] The UNEP and ASEAN agreements, and similar modern framework environmental protection agreements and laws which IUCN has prepared for the Organization of African Unity and several African nations,[36] reflect a general principle of international law that a nation shall not use its territory to cause injury to another nation.

The best restatement of what is emerging as a customary rule of international law is text of the European Community's Directive:[37]

> "Where a Member State is aware that a project is likely to have significant effects on the environment

> in another Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall forward the information gathered pursuant to Article 5 [EIA] to the other Member State at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between two member States on a reciprocal and equivalent basis."

The Socialist nations also have begun to use EIA techniques. Hungary has instituted procedures, and acknowledged that it based them on NEPA. Poland has experimented with EIA techniques. Last January, the Soviet Union announced creation of a new State Committee on the Protection of Nature ("GOSKOMPRIRODA"); one of its six departments will be for undertaking environmental impact assessments.[11] As I noted above, Soviet experiments with EIA techniques, including public participation in decision-making, we already underway.

In fact, the only regions lacking national undertakings on EIA are Latin America, the Middle East and the Indo-Pakistan area. Nations in these areas have supported the UNEP EIA recommendations, and can be expected to move toward establishing EIA measures.

Nations abroad, including our good neighbor Canada, have had the sense to adapt and streamline NEPA to their own national procedures for governmental decision-making. No one is advocating export of NEPA in the exact form followed by the federal government. States like New York, Wisconsin, California, Massachusetts and Washington have similarly adapted NEPA to meet their state needs. Those who oppose the use of EIA often express one of two fears: (a) the USA judicial review process, with adversial rigor, inappropriately would be forced on other lands or (b) the EIA process would delay projects.

Neither of these fears is justified. As for the first concern, EIA does not and need not entail litigation in those nations with different legal regimes; EIA invariably does involve whatever form of responsible public participation is appropriate to a given nation or state. The first objection misconceives how the EIA process works, confusing it with the role which American courts serve in reviewing American EIS compliance. The second concern is similarly misplaced. EIA is deliberative, informed decision-making; while it takes time to assemble and assess environmental data, it takes more time and much more money to cope with the ecological and engineering problems which were unanticipated by expedient project promotion and approval. It admittedly takes time to study and avoid problems, but such time is an investment and should not be characterized as delay either for sake of delay or to oppose a project.

In my travels abroad over the past several years for lectures, consulting or government service, I find that today NEPA is much admired. Officials in Turkey endorse it and are striving to implement a NEPA-like requirement; India has shown interest in EIA. An annual EIA training program for developing country officials is held in Scotland.

The World Bank could do more to train personnel in developing countries in EIA techniques. Prototype training and consulting programs exist; the International Environment and Development Service (IEDS) of the non-profit World Environment Center (New York City) has an excellent record of assisting developing nations through contributions of technicial assistance from leading industrial corporations with the help of US AID and EPA. The World Bank should

be encouraged to further IEDS and similar efforts. As an international community, we are well beyond any early worry that decision-makers abroad might oppose EIA because it appeared that the United States was imposing its methodology abroad. On the contrary, as a nation we should be proud of the acceptance which this Congressional innovation has achieved.

III. The International Financial Institutions

Since the U.S. participates in multilateral financial agencies, such as the World Bank, the U.S. should be systematically applying its NEPA duties in its decisions on the financing of these banks. Courts have regularly held that NEPA duties apply when grants and loans are made,[10] and there is no reason for EIA not to apply to grants for international financial contributions as described above. At the same time, there is no reason why the banks should not be conducting their own environmental reviews. The multilateral development banks could, at a minimum, confore with the UNEP Guidelines, and should embrace the EIA procedures of the Common Market, the USA NEPA process, and Canada's EIA procedures.

Since the Foreign Assistance Act of 1961,[11] Congress has authorized assistance to developing countries for the protection and management of their environment and natural resources. In 1981, Congress authorized the President to require foreign aid agencies to prepare and consider environmental assessments for projects "significantly affecting the environment of any foreign country."[12] If this aid is to be well spent, there must be reasonable guarantees that it will provide the benefits intended. In an address to the

National Association of Environmental Professionals, former CEQ Chairman Charles Warren explained why the NEPA process was needed to assure such reasonable guarantees:[14]

> "But within our borders and beyond then, we have seen, again and again, the direct and indirect environmental impacts of well-tended projects create havoc with a nation's food supplies and its people's health.
>
> "In the Ryukyu Islands following World War II, a U.S. attempt to improve sanitary and dietary standards in the schools led, indirectly, to the spread of trachoma, an eye disease, among children. In untreated cases, this disease can cause blindness. Also in the Ryukus, the U.S. introduction of piped water led to an extensive outbreak of dysentery.
>
> "In Indonesia, the farmers used an imported pesticide -- a chlorinated hydrocarbon similar to DDT -- to control a destructive insect known as the rice borer. The highly toxic pesticide also killed fish in the rice paddies. Not only had the fish provided the farmers with a cash crop, fertilized the rice, and helped control many caterpillars of insect pests, but they had also given the farmers a vital source of protein.
>
> "In Brazil's Sao Francisco Valley, a hydroelectric project was built with financial aid from two international agencies, two U.S. agencies, and private banks in Canada, France, and the U.S. unanticipated environmental impacts from this project forced the expenditure of more than $150 millions to resettle farmers and control floods.
>
> "In Egypt -- perhaps the best known case of development gone wrong -- the Aswan High Dam financed by the Soviet Union has sharply increased the incidence of a blood disease caused by a water-borne parasite. The last estimate I saw was that infection had jumped from 5% of farmers living along the upper Nile to 65%. The disease, which is difficult and expensive to cure, is usually debilitating and sometimes fatal.
>
> "The moral is not that developing areas should be left without running water, that pesticides should be prohibited, or that dams should not be built. The moral, rather, is that the transfer of modern technologies into underdeveloped lands can trigger

> social and natural mechanisms that lead to trouble. Before advanced nations undertake such transfers, therefore, they should try to anticipate the unwanted, potentially damaging side effects of their actions.
>
> "Because of the relatively embryonic state of our ecological science, not even the advanced nations can always predict such side effects. But our knowledge, our experience, and our resources vastly exceed those of underdeveloped nations -- and through NEPA the United States can provide access to the considerable ecological expertise it does possess."

Charles Warren's list can be updated. Foreign aid is currently being criticized for inducing environmental problems such as those involving Livestock Production for Botswana or the Yangtze River's Three Gorges Dam in the Peoples Republic of China. Congress has demonstrated that it wants to help <u>legitimate</u> socio-economic development abroad. It will not stand for aid dollars being siphoned away through corruption nor will it stand for spending on projects which undermine sustainable development. The Continuing Resolution for FY 1988 adopted last December[11] provides that the multilateral development banks should continue to reform their environmental procedures, and that the Treasury Department should encourage such reform.[44] This reaffirms Section 539 of Public Law 99-591, and Treasury's mandate to encourage reform.

The pace of reform in international financial institutions has been laborious and slow. There is no sound reason why the World Bank and other multilateral development banks have not drawn on the EIA expertise in agencies in nations such as the USA, Australia, Canada or the Netherlands, in order to establish their own EIA procedures.

IV. Legislative Options

Congress has several options which it could pursue to accelerate the pace of reform in the multilateral development banks. These appear to include the following:

(a) Jawbone - Reiterate the mandate to Treasury to urge reform.

(b) Legislate EIS Preparation - Require that the federal agency representing the United States in any international financial assistance organization prepare an environmental impact statement in each discrete budget undertaking for development projects. Since international financial institution budgets are prepared more than a year in advance, there is adequate time to prepare an EIS. Alternatively, assign all such EIS preparation to AID or Treasury or State.

(c) Legislate To Leverage - Require that the federal agency representing the United States in any international financial assistance organization select one or more projects or programs for preparation of a programmatic EIS by the agency.[43] Payment of U.S. aid would be conditioned on completing the programmatic EIS and the adoption of generic measures for mitigation of adverse environmental effects. The U.S. could do this jointly with nations such as The Netherlands which have efficient EIA procedures like NEPA.

Once the organization agreed to do an analysis equivalent to an EIS, the federal agency would be relieved of its EIS responsibility so long as the international financial organization met minimal competency tests in performing its own EIA.

(d) Legislate To Expand E.O. 12114 - Simply direct that Treasury comply with NEPA Section 102(2)(C) for each vote on proposed actions of multilateral development banks such as the International Monetary Fund. This would require a phase-in period since many development projects are in late stages of development. It should also make some provision to defer to any EIS prepared by the relevant international financial institution so as to avoid unnecessary duplication. Treasury could be directed to use AID's procedures,[44] or be left to do its own rule-making to establish agency procedures on how to comply.

(e) Provide Technical Training - Appropriate and especially allocate funds solely for providing international financial institutions with training technical advice and assistance and personnel in order to establish EIA procedures and actually undertake initial environmental impact assessment procedures. Alternatively, provide such help directly to foreign developing nations through AID.

(f) Punt - Leave further evolution of the applicability of NEPA abroad to the President and/or the courts.

In conclusion, we have seen that compliance with NEPA is an established fact for most federal agencies, and that the foreign affairs agencies are no exception. All agencies were reluctant to retool initially; once experienced in EIA techniques, agencies realize the many benefits of the process which Congress created through NEPA. It would be a small, but probably an effective step for Congress to mandate the preparation of programmatic environmental impact statements as proposed in Option "C" above. That escalates the pressure on multilateral development banks to establish EIA

procedures, with a minimum of cost to U.S. taxpayers. The fact that the U.S. would be scrutinizing the environmental sufficiency of projects of international financial institutions would probably propel them to establish their own EIA procedures as soon as possible. This result would be encouraged by authorizing the U.S. federal agency to rely on the multilateral EIA whenever such is done consistent with U.S. standards under NEPA.

As the world's population grows and more projects are begun, it is critical that they be completed in a sound environmental context. We do not have enough time or money to do the projects twice, originally and then by way of repair or revision once the environmental flaws appear.

Congress was extraordinarily effective and farsighted when it first created the methodology of EIA. EIA procedures began with NEPA. EIA procedures rapidly are becoming an international standard. There is no reason for either the foreign affairs agencies or the international financial institutions to avoid employing routine EIA procedures. In Senator Jackson's words, "The global character of ecological relationships must be the guide for domestic activities."[7]

I wish you success in your deliberations following these hearings. I shall be pleased to provide any further information you may need on these matters. Thank you for your attention.

Annotations To Testimony

1.42 USC 4321, et seq.

2. ECC Council Directive of 27 June 1985, "On the assessment of the effects of certain public and private projects on the environment," 85/337/EEC, 175 Official J. of the European Communities 41 (July 7, 1985).

3. N.Z. Cabinet Decision of 7 August 1972, and EIA procedures effective 1 March 1974 promulgated by the Commission for the Environment.

4. See D.A.R. Williams, Chap. VIII, "Environmental Impact Assessment and Reporting," in ENVIRONMENTAL LAW at 234 and 237-8 (Butterworth, Wellington, N.Z. 1980).

5. Canada, Cabinet Decision of 20 December 1977, "Environmental Assessment and Review Process," modified by Cabinet Decision of 15 February 1977, and strengthened by guidelines issued by Order in Council, in June of 1984. See B. Sadler (ed.), Audit and Evaluation in Environmental Assessment and Management: Canadian and International Experience (Environment Canada, 1987).

6. Progress Report on Implementation of Environmental Reform in Multilateral Development Banks, transmitted to Senator Robert W. Kasten, Jr., by John K. Meagher, Assistant Secretary for Legislative Affairs, U.S. Department of the Treasury, February 5, 1988.

7. "Environmental Impact Assessment in The Netherlands," Ministry of Housing, Physical Planning and Environment (The Hague, 28 August 1984).

8. Report of the Legal Advisory Committee To The President's Council on Environmental Quality, Whitney North Seymour Jr., Chairman (December, 1971).

9. NY State Environmental Quality Review Act ("SEQRA"), Article 8, Environmental Conservation Law, 17% McKinney's Consol. L. of N.Y.

10. Environmental Law Institute, NEPA IN ACTION: ENVIRONMENTAL OFFICES IN NINETEEN FEDERAL AGENCIES (October, 1981).

11. M.T. Farvar, J.P. Milton, The Careless Technology: Ecology and International Development (National History Press, 1972).

12. Op. cit., supra note 8, at p. 14.

13. See my article, N.A. Robinson, "Extraterritorial Environmental Protection Obligations of the Foreign Affairs Agencies: The Unfulfilled Mandates of NEPA," 7 N.Y.U.J. INT'L L. and POL. 257

(1974).

14. See Note, "The International Joint Commission and International Boundary and Water Commission: Potential for Environmental Control Along the Boundaries," 6 N.Y.U.J. INT'L L. and POL. 499 (1973).

15. Sierra Club v. AEC, 4 ELR 20885 (Docket 1867-73, D.D.C. Aug. 3, 1974).

16. Environmental Defense Fund v. AID, 6 ELR 20121 (Docket 75-0500, D.D.C. Dec. 5, 1975).

17. Sierra Club v. Coleman, 405 F. Supp. 53; 421 F. Supp. 63; 6 ELR 20799; (Docket No. 75-1040 (D.D.C. Oct. 17, 1975; Sept 23, 1976); aafd. sub. nom. Sierra Club v. Adams, 578 F. 2d 389, Docket No. 76-2158 (D.C. Cir., March 14, 1978).

18. Sierra Club v. Adams, 578 F. 2d 389 at 391-92, note 14.

19. A.D. Tarlock, "The Application of the National Environmental Policy Act of 1969 To The Darien Gap Highway Project," 7 N.Y.U.J. INT'L. L. and POL. 459 (1974).

20. 42 USC 4332(2)(F), originally enacted as §102(2)(E() in P.L. 91-190.

21. 463 F. 2d 1261 (D.C. Cir., 1972).

22. Id. at 1262-63.

23. People of Saipan v. Interior, 356 F. Supp. 645 (D. Haw. 1973), aff'd as afd 502 F. 2d 90 (9th Cir., 1974); People of Enewatak v. Laird, 353 F. Supp. 811 (D. Haw. 1973); see also NORMAL v. State, 452 F. Supp. 1226, 8 ELR 20572 11 ERC 1841 (Docket 78-0428; D.D.C. June 8, 1978), noted in "NEPA and the Mexican Marijuana Eradication Program," 19 NAT. RES. J. 213 (1979).

24. CEQ memorandum to Heads of Agencies, from Russell Peterson, September 24, 1976.

25. CEQ Memorandum to Heads of Agencies, from Charles Warren, January 19, 1978.

26. Id. at Appendix B, letter of Dec. 9, 1977 from AID Administrator John J. Gilligan.

27. E.O. 12114 (Jan. 4, 1979); see also "President Orders Environmental Review of International Actions," 9 E.L.R. 10011 (Jan., 1979.

28. Section 2-5(a), E.O. 12114.

29. NRDC v. NRC, 647 F. 2d. 1345 (D.C. Cir., 1981).

30. The CEQ Legal Advisory Committee had reported this trend as early as 1971. See op. cit., supra note 8, at p. 16: "the attitudes of the developing countries are changing - in part because of U.S. diplomatic efforts to this end -- and can be expected to continue to change in the direction of increased concern for the environmental effects of development; moreover, the §102(2)(c) statement can be a useful educational device to further this objective."

31. Senator Jackson in floor debate on NEPA, 115 CONG. REC. 4041 (1969).

32. Japan, Cabinet Decision, "On Implementation of Environmental Impact Assessment," 28 August 1984.

33. Agenda Item 10, UNEP Governing Council, 14th Session, June 1987.

34. Id., 4th Principle.

35. ASEAN Agreement on the Conservation of Nature and Natural Resources, reprinted in 15 Environmental Policy and Law pp. 64-69 (1985), provides in Article 14 for "Impact Assessment" as follows:

> "1) The Contracting Parties undertake that proposals for any activity which may significantly affect the natural environment shall as far as possible be subject to an assessment of their consequences before they are adopted, and they shall take into consideration the results of this assessment in their decision-making process.
>
> "2) In those cases where any such activities are undertaken, the Contracting Parties shall plan and carry them out so as to overcome or minimize any assessed adverse effects and shall monitor such effects with a view to taking remedial action as appropriate."

36. See generally the texts of various laws and the revised Treaty on the Conservation of Nature, Organization of African Unity, reprinted in ENVIRONMENTAL POLICY AND LAW (editorial offices in Bonn F.R.G.).

37. Article 7 of EEC Directive, supra note 2.

38. On Hungary, see Sandor Kisgyorgy, "The Possibilities and Limitations of the Environmental Impact Assessment In Case of Insufficiency of Available Data-Hungarian Experiences," UN ECE Seminar on Envir'l. Impact Assessment, Warsaw, 30 March 1987 (ENV/SEM,. 17/R. 13). On Poland, see Environmental Impact Assessment System (Final Technical Report, UNDP, WHO, Polish Peoples Republic Ministry of Administration, Local Economy and Envir'l. Prot., July 1983). On the USSR, see Decree of the CPSU Central Committee and Council of Ministers printed in Pravda, January 17, 1988.

39. This has been the case since shortly after NEPA's enactment. See, e.g. the EIS for a loan by the U.S. Department of Housing and Urban Development of $3.5 million for an apartment building in Oregon, Goose Hollow Foothills League v. Romney, 334 F. Supp. F. Supp. 877, 1 ELR 20492 (D.C. Or., 1971).

40. Section 118, 22 U.S.C. 2151 p.

41. Section 117(c) of the Foreign Assistance Act, 95 Stat. 1533.

42. Charles Warren, "A Look Before We Leap: Applying NEPA To U.S. Actions Abroad," 3rd Annual Conference, Nat'l Assoc. of Envir'l Professionals (Feb. 8, 1978).

43. H.J.R. 395 (Dec. 21, 1987); FY 1988 Continuing Resolution is Public Law 100-202.

44. Id., §537(a).

45. 22 C.F.R. Part 216.

46. On programmatic environmental impact statements generally see W.H. RODGERS, JR., ENVIRONMENTAL LAW, §7.9 (Wests, 1977).

47. 115 CONG. REC. 29002 (Oct. 8, 1969).

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Selected Pages of The Report of The
Legal Advisory Committee
To The President's Council on Environmental Quality
(December, 1971)

APPENDIX TO

Testimony of

Nicholas A. Robinson

Before The
U.S. Senate
Subcommittee on Hazardous Waste & Toxic Substances
Committee on Environment and Public Works

REPORT OF THE LEGAL ADVISORY COMMITTEE TO THE PRESIDENT'S COUNCIL ON ENVIRONMENTAL QUALITY

December, 1971

Members of the Legal Advisory Committee

Chairman

Whitney North Seymour, Jr.
U.S. Attorney for the Southern District of New York
New York, New York

Members

Malcolm Baldwin
The Conservation Foundation
Washington, D.C.

William T. Coleman, Jr.
Dilworth, Paxson, Kalish, Levy and Coleman
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Christopher DeMuth
University of Chicago Law School
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Professor Frank P. Grad
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Columbia Law School
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Nicholas Robinson
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Professor Ann L. Strong
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Report of the Legal Advisory Committee to the President's Council on Environmental Quality December, 1971

Just over 100 years ago, in 1869, Leopold Trouvelot, a French artist, astronomer and entomologist, was conducting experiments in Medford, Massachusetts, in an effort to develop a more hardy species of silk worms compatible to the rigors of the New England climate. As part of his experimentation, Trouvelot imported a new moth, which, although it did not cross with the silk worms, did prove to be extremely hardy. While Trouvelot watched in growing alarm, the imported insect multiplied rapidly and soon escaped from the experimental station. Trouvelot issued a warning to the public, then packed his bags and headed back home to Paris. Before long, Medford and nearby towns were subjected to an epidemic of caterpillars, devouring the leaves of trees and shrubs and causing death to those that were defoliated in the process. Thus, out of the best of intentions, the curse of the gypsy moth was introduced to the United States.

Most of the afflictions suffered by the environment began with similar good intentions. Economic expansion, job opportunities, and, above all, "progress," led the way in the unwitting despoliation of the landscape, the air, and the water. The development of industrial processes, the internal combustion engine, the manufacture of pesticides, and the countless similar intended -- and real -- benefits have posed repeated threats to our natural resources. Now that we have finally realized the extent of the problem we have created, we are, like those hard-working scientists who are still trying to cope with Trouvelot's gypsy moth, dealing with a problem that has gotten out of hand.

The challenge today is to find corrective measures which will be effective in solving the problem, while

at the same time not resulting in steps which are unfair or unreasonable. That is the context in which the Legal Advisory Committee to the President's Council on Environmental Quality has been working to develop legal concepts and techniques which might assist the Council in carrying out its statutory obligations to protect the environment.

Appointment of the Legal Advisory Committee was announced by CEQ's Chairman Russell E. Train on April 30, 1970. The Committee was made up of private and government lawyers, law professors, representatives of conservation groups, and a law student representative, all serving as unpaid volunteers. The committee members brought imposing credentials in various aspects of environmental law and know-how. Timothy Atkeson, CEQ's General Counsel, was assigned to serve as liaison between it and the Legal Advisory Committee.

The first meeting of the Legal Advisory Committee was held in Washington on May 25, 1970. At that meeting the overall program and objectives of the Committee were agreed upon. A series of subcommittees was established to conduct research and to prepare draft reports and recommendations. These subcommittees were as follows:

1. Subcommittee on Administrative Procedures, to study administrative practices followed by Federal agencies whose activities affect the quality of the environment, including agency compliance with the reporting requirements of the National Environmental Policy Act of 1969 concerning actions which significantly affect the environment; possible procedural changes to increase public participation in decision making; and the adequacy of administrative review in environmental matters. Chairman: Professor Louis Jaffe of Harvard Law School.

2. Subcommittee on Land Division Procedures, to review the practices followed by the Department of Justice in handling substantive issues raised in environmental cases brought against public agencies. Chairman: William F. Kennedy, Corporate Counsel to General Electric Company.

3. Subcommittee on an Environmental Bill of Rights, to consider the pros and cons of an amendment to the Constitution of the United States specifically relating to environmental concerns. Chairman: Malcolm Baldwin, Senior Legal Associate of The Conservation Foundation.

4. Subcommittee on Federal Enforcement, to review the adequacy of enforcement machinery and practices in implementing existing federal statutes designed to protect the environment; the proper relationship of federal, state and local governments, for most effective enforcement; and the adequacy of present procedures in achieving prompt and sound results. Chairman: Professor Frank P. Grad, Director, Legislative Drafting Research Fund, Columbia Law School.

5. Subcommittee on Law School Liaison, to explore methods for achieving participation by law students and law school faculties in environmental matters. Chairman: E. Lewis Reid, member of a San Francisco law firm.

6. Subcommittee on International Environmental Law, to study procedures and programs for international co-operation in environmental protection. Chairman: Professor Ann Strong, Director, Institute for Environmental Studies, University of Pennsylvania.

7. Subcommittee on Private Litigation, to study proposals for strengthening private litigation as a technique for environmental protection. Chairman: David Sive, partner in a New York law firm.

Thereafter the Committee again met on September 14, 1970, in Washington, where it acted on recommendations by the Subcommittee on Lands Division Procedures, the Subcommittee on Private Litigation, and the Subcommittee on Law School Liaison. Interim reports were received from other Subcommittee chairmen. After full consideration, the Committee also accepted and filed a report by the

Subcommittee on an Environmental Bill of Rights concluding that, on balance, no useful function would be served by endorsing any broad proposed Constitutional amendment covering environmental issues since such amendment does not appear necessary to accomplish significant environmental reforms. The action taken on the other Subcommittee reports is discussed in full below.

A third meeting of the Legal Advisory Committee was held in Washington on January 11, 1971, at which time various interim reports were received and discussed, particularly those relating to Federal enforcement, administrative procedures and international environmental law.

A fourth meeting of the Legal Advisory Committee was held in Washington on April 19, 1971, at which final action was taken on the reports of the Subcommittee on International Environmental Law and of the Subcommittee on Federal Enforcement, both of which are described below. The Subcommittee on Administrative Procedures submitted its second interim report.

The fifth meeting of the Committee was held in Washington on October 18, 1971, at which the Committee received the final report of the Subcommittee on Administrative Procedures and considered problems relating to land use planning.

At the initial meeting of the Legal Advisory Committee on May 25, 1970, one of the matters the members agreed on was that they would try to defy Parkinson's Law and fix a definite date for completion of their labors. That moment has now arrived. This report is a summary of the basic work the Committee set out to complete within 18 months. The Committee has now adjourned sine die, and will continue on a standby basis. Meanwhile, we look with considerable satisfaction on the work that has been accomplished so far.

6. Legislation should provide specifically that persons who suffer injuries to their person or property as a result of violations of State or Federal environmental regulations by another shall have a right of action based on the proof of such violations.

7. The use of so-called market mechanisms to protect environmental concerns -- such as effluent charges and the like -- should be considered, and experience with such mechanisms, abroad and in the States that adopt them, should be observed to provide guidance for the future applications.

8. In the light of the foregoing recommendations, the provisions of the Refuse Act of 1899 are approved, insofar as they provide for direct Federal enforcement against persons responsible for pollution; the penalties provided for in the Refuse Act, however, are inadequate, in that they do not stand in an appropriate relationship to the economic advantages resulting from its violations, and in that the maximum penalties provided bear no relationship to the cost of clean-up. The Refuse Act and its enforcement are not inconsistent with Federal regulatory efforts under the Water Quality Act, and a permit system may well be best designed to carry out its purpose, provided that adequate provisions are made to assure continuing monitoring of effluents and continuing surveillance of permit grantees.

IV. INTERNATIONAL ENVIRONMENTAL LAW

One of the ironies in the new national awareness of the environmental damage that can be done by industry and large-scale economic development is that the United States itself is currently engaged in a number of foreign aid programs which involve many of the same factors, and which may be doing equal environmental damage abroad. By way of example, environmentalists point to the adverse ecological

impact of Russia's foreign aid in the construction of the Aswan Dam in Egypt, which has produced a disruption in the flow of fertilizing minerals to the sea, a decline in the sardine fishing industry, a threat to grain crops, and increased human ravages from the explosion of the fluke parasite in irrigation canals.

Discussions between representatives of the Department of State and representatives of the CEQ disclosed that those who were responsible for our foreign aid program, while proclaiming their sympathy with environmental goals, did not consider themselves bound by the reporting requirements of the National Environmental Policy Act. Section 102 of that Act requires Federal agencies to provide assurances that the environmental impact of their program is kept to a minimum. The State Department simply refused to comply with that provision. In short, there was ground for concern that the United States was not practising what it preached about concern for the environment when it came to its activities in foreign countries.

Accordingly, the Legal Advisory Committee at its meeting on April 19, 1971, unanimously adopted the following resolution, submitted by its Subcommittee on International Environmental Law, chaired by Professor Strong:

> Whereas, the Department of State, in a legal memorandum and comments dated 4 May 1970, contended that §102(2)(C) of the National Environmental Policy Act of 1969, requiring submission of an environmental policy statement, does not apply to State and AID actions carried out within the territorial jurisdiction of another nation; and
>
> Whereas, the Legal Advisory Committee of the Council on Environmental Quality believes that the language and legislative history of the National Environmental Policy Act of 1969, the law of the United States, and the administrative procedures of the Council on Environmental Quality support the conclusion that §102(2)(C) does apply to State and AID actions carried out within the territorial jurisdiction of another nation;

Whereas, the Department of State through a representative meeting with the International Legal Advisory Subcommittee, has made five further representations on behalf of its position to wit:

(1) The Act is ambiguous, the legislative history of the Act on this matter is unclear, as noted by Congressman Dingell, and the detailed steps required to implement Section 102(2)(C) cannot readily be applied to a situation where the action occurs in a foreign country;

(2) many developing countries would regard the imposition of explicit environmental criteria on U.S. AID funding as an infringement on their sovereignty and as a pretext to delay their advance towards industrialization with what they see as its concomitant pollution;

(3) unilateral action by the United States to influence environmental results in other nations is unwise because it would encourage further such unilateral actions by other nations in environmental and other areas and would impede international solutions to these worldwide problems;

(4) specific environmental conditions like other economic or political conditions, should not be made mandatory in State and AID funding of foreign programs since experience has shown this complicates the administration of aid and impedes the development of U.S. relations with developing countries;

(5) the information which would be provided under a §102(2)(C) statement is available already.

The Legal Advisory Committee responds to these representations as follows:

The subsequent response by the Department of State reflected a sharp reversal in position. On September 1, 1971, AID advised the Chairman of the Council on Environmental Quality that the agency had now adopted new procedures to insure that environmental factors would be identified, analyzed and considered in the decision-making process on capital projects in foreign countries in conformity with the interest and objectives of the National Environmental Policy Act.

- - -

The undersigned members of the Legal Advisory Committee -- though not unanimous in all of the recommendations contained herein -- have welcomed the opportunity of sharing their experience and ideas in environmental law with the Council on Environmental Quality, and of developing the concepts referred to in this report for the Council's guidance. While the Council itself has not always followed our advice, we appreciate the fact that it has always listened to us patiently and with close attention. No Advisory Committee could ask for more.

Like all other human endeavors, the President's Council on Environmental Quality is essentially an experiment. Its usefulness depends both on the readiness of the Executive and Legislative branches to listen and heed to its advice, and on the energy, creativity, and dedication of the people who make it run. As one of its advisory bodies we express our confidence that those qualities exist in large measure among the present members and staff of the Council. Our earnest hope is that the enthusiasm and momentum generated during this early period in the

Council's existence can be maintained and accelerated, in developing positive programs which will turn the tide against the past abuses of the rich natural heritage of this land.

Respectfully submitted,

Whitney North Seymour, Jr.
Chairman
Malcolm Baldwin
William T. Coleman, Jr.
Christopher DeMuth
Frank P. Grad
Roger P. Hansen
Wesley A. Hodge
Louis L. Jaffe
William F. Kennedy
Eugene Mooney
E. Lewis Reid
Nicholas Robinson
Ann L. Strong
Joseph L. Sax
David Sive

Washington, D.C.
December 1971

TESTIMONY OF
A. ALAN HILL
CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY
HEARING BEFORE THE SUBCOMMITTEE
ON HAZARDOUS WASTES AND TOXIC SUBSTANCES
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

JUNE 16, 1988

THE NATIONAL ENVIRONMENTAL POLICY ACT AND ITS APPLICATION TO UNITED STATES PARTICIPATION IN ACTIONS OF INTERNATIONAL FINANCIAL INSTITUTIONS AND OTHER INTERNATIONAL ACTIVITIES

Mr. Chairman, thank you for the opportunity to testify this morning on the subject of applying the National Environmental Policy Act (NEPA) to United States participation in the actions of international financial institutions. Your letter requesting testimony posed several questions, addressing the relationship of NEPA to U.S. government actions in the context of international financial institutions, as well as questions relating to the broader issue of NEPA's applicability to U.S. activities overseas. My responses are set forth below.

1. Please comment generally on the role of NEPA in U.S. participation in international activities. Should NEPA be used more extensively in U.S. sponsored or supported international activities? What are the current limitations in applying NEPA to international activities involving the U.S. and what actions would be needed to broaden its use?

General Comments on the Role of NEPA in U. S. Participation in International Activities

NEPA's applicability to U.S. actions overseas, whether in the context of bilateral relationships or international institutions, has been the subject of controversy since Congress passed the act in 1969.[1] There is no record in the legislative history of a debate directly on the point of whether NEPA applied to federal actions occurring outside the territorial jurisdiction of the United States. Soon after NEPA was signed into law by President Nixon on January 1, 1970, federal agencies with responsibilities for projects which were implemented overseas, such as the Department of State, the Agency for International Development, and the Export-Import Bank, asserted the position that the procedural requirements of Section 102(2)(C) of NEPA, the section which requires preparation of a "detailed statement" for major federal actions significantly affecting the quality of the human environment, did not apply to activities which occurred within the territorial jurisdiction of another sovereign government.

In 1971, the issue of NEPA's applicability to U.S. actions abroad was considered by the Legal Advisory Committee to the

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[1] Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970.

3

Council on Environmental Quality (CEQ). The Advisory Committee unanimously concluded that NEPA applied to U.S. actions carried out within the territorial jurisdiction of another nation.[2]

During the early and mid-1970s, this issue continued to be vigorously debated by the various federal agencies. Federal court decisions, so integral to the development of NEPA in a domestic setting, proved less conclusive in answering the question of NEPA's applicability to overseas activities. Cases were settled out of court or decided on other grounds, or decided in such a manner that both sides claimed victory.[3] CEQ's 1973 guidelines implementing the procedural provisions of NEPA required the assessment of both the national and international environment[4], but the guidelines, unlike the present regulations, were advisory only and thus not binding on the agencies.

In 1976, CEQ issued a "Memorandum on the Application of the EIS Requirement to Environmental Impacts Abroad of Major Federal Actions"[5], which concluded that the procedural requirements of Section 102(2)(C) of NEPA apply to all federal actions having

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[2] Report of the Legal Advisory Committee to the President's Council on Environmental Quality, December 1971, pp. 13-17.

[3] See, Environmental Defense Fund v. Agency for International Development, 6 ELR 20121 (D.D.C. 1975); Sierra Club v. Coleman, 405 F. Supp. 53 (D.D.C. 1975); 421 F.Supp. 63 (D.D.C. 1976); Sierra Club v. Atomic Energy Commission, 4 ELR 20885 (D.D.C. 1974); Wilderness Society V. Morton, 463 F.2d 1261 (D.C. Cir. 1972).

[4] 40 C.F.R. 15008.(a)(3)(i) (1973).

[5] September 24, 1976.

significant effects on the quality of the human environment, whether in the United States, in other countries, or in areas outside the jurisdiction of any country. The Memorandum also stated that NEPA provides sufficient procedural flexibility to accommodate national security or foreign policy considerations.

CEQ's direction to federal agencies to fully assess the potential environmental effects of proposed actions outside the United States continued to be controversial and only partially implemented during the mid 1970s. In 1977, President Carter issued an Executive Order[6] directing CEQ to issue binding regulations to federal agencies for implementing the procedural provisions of NEPA. During the course of its work, CEQ identified the issue of NEPA's applicability to federal actions abroad as an issue which needed to be addressed in a regulatory context. That effort, involving a long and much publicized interagency debate[7], resulted in the issuance by President Carter of Executive Order 12114[8], on Environmental Effects Abroad of Major Federal Actions. The basic thrust behind development of the Executive Order was to negotiate a practical approach to the issue which would enable agencies to take into account

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[6] Executive Order 11514, as amended by Executive Order 11991, May 24, 1977.

[7] See "President Orders Environmental Review of International Actions", 9 ELR 10011 (January, 1979); "Forthcoming CEQ Regulations to Determine Whether NEPA Applies to Environmental Impacts Limited to Foreign Countries", 8 ELR 10111 (June, 1978).

[8] See Appendix A.

environmental effects of federal actions abroad, consistent with U.S. economic, foreign policy, and national security interests, while avoiding a direct resolution of the legal issue.

Executive Order 12114 was issued on January 4, 1979. Section 1 of the order states that it ". . . represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purposes of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions." It does not create a cause of action in the courts.[9] The term "environment" is defined as the natural and physical environment and excludes social, economic and other environments.[10]

Under Executive Order 12114, federal agencies were directed to publish implementing procedures, in consultation with CEQ and the Department of State. The agency procedures must address the following categories of actions:

(a) major federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica). For these actions, an environmental impact statement (EIS) must be prepared.

(b) major federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action. For these

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[9] E.O. 12114, Section 3-1.

[10] E.O. 12114, Section 3-4.

actions, the lead agency may prepare either a bilateral or multilateral environment study or a concise review of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(c) major federal actions significantly affecting the environment of a foreign nation which provide to that nation:

> (1) a product or physical project producing a principal product or an emission or effluent which is prohibited or strictly regulated by federal law in the U.S. because its toxic effects on the environment create a serious public health risk; or
>
> (2) a physical project which in the United States is prohibited or strictly regulated by federal law to protect the environment against radioactive substances.

For these categories, the agency may also comply by preparing either a bilateral or multilateral environmental study or a concise environmental review.

(d) major federal actions outside the U.S., its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. For this category, an agency may prepare either an EIS, bilateral or multilateral environmental study, or a concise environmental review.

The Executive Order provides that agencies coordinate with other federal agencies possessing relevant expertise on the environmental impacts of the proposed action, and to make

appropriate provisions for determining when an affected nation should be informed of the availability of environmental documents.[11] It exempts the following actions:

(a) actions not having a significant effect on the environment outside the U.S. as determined by the agency;

(b) actions taken by the President;

(c) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(d) intelligence activities and arms transfers;

(e) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(f) votes and other actions in international conferences and organizations;

(g) disaster and emergency relief action.[12]

Additionally, the Executive Order grants to agencies the authority to provide for modifications in the contents, timing and availability of documents to other affected federal agencies and affected nations where it is necessary: (1) to enable the agency to decide and act promptly when required; (2) to avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; and (3) to ensure appropriate reflection of diplomatic factors; international commercial, competitive and export promotion

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[11] E.O. 12114, Section 2-4(d).

[12] E.O. 12114 Section 2-5(a).

factors; needs for governmental or commercial confidentiality; national security considerations; difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and the degree to which the agency is involved in or able to affect a decision to be made.[13] Additionally, agencies may provide for categorical exclusions and for such exemptions in addition to those already mentioned, "as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances."[14]

In 1981, the District of Columbia Circuit Court of Appeals faced the issue of whether the Nuclear Regulatory Commission (NRC) violated NEPA by not preparing an EIS before issuing a license authorizing the export of a nuclear reactor to the Republic of the Philippines.[15] The case involved Westinghouse Corporation's 1977 application to the NRC for a license allowing it to sell and export a commercial nuclear power reactor to the Philippines. Concern arose because the reactor was to be located near an active volcano in a known earthquake zone. The NRC took the position that NEPA did not impose a duty to consider impacts on the Philippine environment. The Department of State, in reaching its recommendation that the NRC issue the export

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[13] E.O. 12114, Section 2-5(b).

[14] E.O. 12114, Section 2-5(c).

[15] Natural Resources Defense Council, Inc. v. Nuclear Regulatory Commission, 647 F.2d 1345 (D.C. Cir. 1981).

license, prepared the concise environmental review required by Executive Order 12114. In its ruling that NEPA did not require the NRC to prepare an EIS on the export of the nuclear reactor, the majority opinion noted that NEPA, its legislative history, and the related case law were inconclusive as to NEPA's international scope. Mindful of the foreign policy implications and lacking clear Congressional direction otherwise, the court concluded that NEPA did not apply to the action taken by the NRC.[16]

Last October, the CEQ General Counsel's office surveyed all federal agencies with regard to their compliance with Executive Order 12114. Among other things, CEQ asked agencies to provide details about their implementation of the order over the past three years. The results of the survey show that since 1985, over 200 documents have been prepared under the Executive Order by seven federal agencies.[17] The vast majority of these documents are for the Environmental Protection Agency's Prevention of Significant Deterioration Permits under the Clean Air Act. Excluding these, the number of actions falling within the Executive Order since 1985 is approximately 45.

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[16] A concurring opinion argued that the NEPA requirement for an EIS would conflict with the timetable for decisionmaking on nuclear exports required by the Nuclear Non-Proliferation Act, thus presenting a statutory conflict.

[17] The seven agencies are the Defense Logistics AGency, the Defense Nuclear Agency, the Joint Chiefs of Staff - Pacific Command, Army, the State Department, the Environmental Protection Agency and the Coast Guard.

No agency mentioned any problems with implementing the Executive Order. The response from the U.S. Army's Pacific Command stated that, "The implementation of E.O. 12114 has caused a small increase in cost and some delay in the design and construction of facilities. . . . However, the requirements in the E.O. have resulted in fewer and less costly problems later on." The Coast Guard commented that, ". . . we feel it is probably best to consider any action on foreign soil that may have a significant environmental effect the same as if it were in the U.S. and regulated by all U.S. environmental laws. This is generally greeted favorably by foreign host countries."

Agencies which did offer suggestions for improvement asked for CEQ guidance as to when actions abroad would require compliance with the Executive Order and to what extent. Further, there was some confusion demonstrated between the use of EISs, environmental assessments, concise environmental reviews, and bilateral or multilateral environmental studies.

What are the current limitations in applying NEPA to international activities involving the U.S. and what actions would be needed to broaden its use?

Executive Order 12114 currently defines the federal agencies' responsibilities to implementing an environmental assessment process for international activities involving the United States.

Should NEPA be used more extensively in U.S. sponsored or supported international activities?

I do not believe that the NEPA process, as interpreted by the CEQ regulations for domestic proposals, is appropriate for

use by federal agencies involved in actions proposed by multilateral institutions. Rather, I believe that the United States should be encouraging the development of environmental impact assessment within the framework of the multilateral institutions themselves. One of the strengths of the NEPA process, as applied domestically, has been that it is a process which is integrated into the decisionmaking of the government agency which is proposing the action. In the context of the multilateral development banks (MDBS), application of this principle would suggest that the environmental impact assessment process should be implemented by the MDB itself.

I would support a program of U.S. assistance to develop an environmental impact assessment process within the MDBs, including technical assistance and educational training, as well as cooperatively prepared environmental assessments.

Additionally, the Department of the Treasury and the Department of State, particularly through the Agency for International Development, have taken a number of positive steps to increase the consideration of environmental factors within the decisionmaking process of the multilateral development banks (MDBS). I support these measures, which are outlined in detail in those agencies' written testimony.

In developing any program of assistance to the MDBs in the area of environmental impact assessment, I believe the following principles should be considered:

* The increasing awareness of the interrelated, global

characteristics of environmental impacts.

* The international leadership role which the United States has repeatedly assumed in environmental protection.

* The fact that environmental impact assessment does not require an agency to choose an action based on environmental grounds; rather, it mandates consideration of the environment.

* The fact that many other countries and multilateral fora have and are adopting environmental impact assessment procedures, including procedures for assessing transboundary impacts.

2. Have other countries adopted policies and procedures similar to NEPA? If so, do they extend the procedures to their participation in international activities?

Many other countries, following the lead of the United States, have adopted policies and procedures for environmental impact assessment (EIA) similar to NEPA. Some of the countries which have such policies and procedures are Australia[18], Canada[19], France[20], Indonesia[21], Japan[22], the Netherlands[23], and

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[18] Environment Protection (Impact of Proposals) Act, 1974.

[19] Environmental Assessment and Review Process, Cabinet Decision, December 20, 1973, as modified by Cabinet Decision, February 15, 1977.

[20] Law 76-629, July 10, 1976.

Thailand[24]. Although CEQ officials have met with many visitors from these and other countries regarding their EIA processes, we do not have each country's current regulations on file, and thus cannot address the question of whether their procedures extend to participation in international activities.[25] We are not aware, however, of any other country which has sought to extend its procedures to its participation in any of the MDBs.

Nevertheless, I would like to emphasize that here have been several very positive developments in international fora regarding environmental impact assessment. Last year, the United Nations Environment Programme Governing Council adopted a set of "Goals and Principles of Environmental Impact Assessment."[26] The Goals and Principles combine the basic

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[21] Basic Provisions for the Management of the Living Environment, Article 16, 1981.

[22] On Implementation of Environmental Impact Assessment, Cabinet Decision, August 28, 1984.

[23] Environmental Impact Assessment in the Netherlands, Ministry of Housing, Physical Planning and Environment, The Hague, March 1984.

[24] National Environmental Quality Act, 1975.

[25] A sense of the widespread interest in the world about environmental impact assessment may be gleamed from a list of the countries represented at the 8th Annual International Seminar on Environmental Impact Assessment, held in Scotland in 1987. The countries were: Bangladesh, Brazil, Cameroon, Canada, Denmark, Egypt, England, Germany, Greece, Guyana, Honduras, India, Indonesia, Iraq, Ireland, Italy, Kuwait, Kenya, Malaysia, Mexico, Morocco, the Philippines, Portugal, Qatar, Scotland, Somalia, Sri Lanka, Sudan, Taiwan, the Netherlands, Turkey, Uganda, the United States, and Venezuela.

[26] UNEP Governing Council, 14th Session, June 8-19, Nairobi, Kenya, Agenda Item 10. See Appendix B.

rationale and method for assessing the environmental impacts of state action with a broad, generic approach which permits the flexibility necessary to adopt them to the legal systems of all member nations. They are voluntary guidelines. The U.S. strongly supported their adoption and urged that they be utilized as the basis for negotiation of an international convention on environmental impact assessment.

The Economic Commission for Europe recently considered EIA at a seminar on the subject held in Warsaw, Poland, in 1987. The conclusions reached at that meeting included provisions for EIA in a transboundary context, including notification, consultation, public participation, and monitoring.[27]

Finally, the European Community (EC), composed of twelve countries some of which have widely differing ecological, economic, and cultural settings, has issued a directive requiring all member nations to adopt EIA procedures by July, 1988.[28] The EC Directive also contains a provision for EIA for transboundary environmental impacts within the European Community.[29]

All of these developments suggest to me that there is an increasing international awareness of environmental issues and

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[27] Draft Recommendations to ECE Governments, Seminar on Environmental Impact Assessment, Warsaw, Poland, September 21-15, 1987, Provision Number 23.

[28] Council of the European Communities, Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment, June 27, 1985.

[29] Council of the European Communities, Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment, June 27, 1985.

growing receptivity to cooperative measures among a number of countries. I believe that we can build on these developments and work cooperatively with other countries in fashioning effective environmental assessment procedures in the MDBs and in the developing countries.

3. Are there specific incidences or situations where environmental damage has occurred that in your view could have been mitigated by applying the NEPA process to U.S. participation in international activities?

It must be realized that the application of NEPA or a similar environmental impact assessment process by either the U.S. or the appropriate MDB to these types of actions would not automatically eliminate or mitigate environmental damage; it would, however, provide information about environmental impacts in a timely to decisionmakers.

There are serious environmental problems which appear to have been exacerbated on several occasions by large development projects, funded by multilateral institutions. Deforestation and desertification are among the impacts mostly frequently identified in this regard. Some examples are:

The Narmada Valley Development Project, India This project involves the damming of the Narmada River, the largest west-flowing river in India, using 30 major dams, 135 medium-sized dams, and more than 3,000 small dams. Benefits of the project are viewed as new jobs, potable water, irrigation and flood control; environmental concerns include destruction of massive

amounts of forests, wildlife habitat and agricultural lands.[30]

Livestock Project, Botswana Two livestock projects designed to increase beef production for export have, according to many experts, led to serious overgrazing and increased desertification. Concerns have also been raised about construction of fences in the path of wildebeest migration routes.

4. In your view, is it necessary or appropriate to amend NEPA to extend the authorities to U.S. actions involving multilateral development loans in other countries? What do you believe the effect would be in terms of influencing the scope or direction of proposed projects? How would NEPA work in this situation?

I believe that the United States should implement a program to ensure that the MDBs themselves implement a strong environmental review process on proposed projects. This would not require an amendment to NEPA. Rather, I would support a program of technical assistance and training, including cooperatively prepared environmental impact analyses, with the goal of developing systematic procedures to ensure that environmental impact analysis is a central part of every loan proposal. I believe that such a program should include:

* establishment of an orderly, predictable process to consider the environmental impacts of proposed projects;

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[30] A report from the Agency for International Development states that environmental studies were initiated comparatively late in the planning process. "One result is that the examination of alternatives with fewer social/environmental impacts has been precluded". April, 1988.

* wider involvement of government agencies with special expertise in environmental concerns, as well as by interested members of the public sector;

* a recognition of the interrelated, global nature of environmental impacts;

* utilization of the "Goals and Principles of Environmental Impact Assessment" adopted last year by the United Nations Environment Programme Governing Council.

Used in a rational and efficient way, such a program would be one of the many tools, formulated by the executive branch, by Congress, and by many other interested groups, to address the significant concerns about environmental impacts of projects funded by the MDBs. If I make take the liberty of quoting the Secretary of the Treasury:

> "What the Reagan Administration wants the World Bank and the other development banks to do is to make environmental analysis a central part of every loan proposal -- systematically and routinely. We want the Bank to draw on the expertise of trained environmental analysts -- both on its staff and outside consultants -- who know developing countries and can assess just what impact any new project or policy will have on the ecology of those countries. It should then incorporate that analysis into its lending decisions and assistance -- from the very beginning of the lending process."[31]

How NEPA would work for U.S. actions involving multilateral development loans in other countries?

I believe that the environmental impact assessment process is better handled in the framework of MDB loans to other

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[31]. Remarks by the Secretary of the Treasury, James A. Baker, III, at the Fourth World Wilderness Congress, Denver, Colorado, September 11, 1987.

countries by the type of program which I have suggested above; in other words, a cooperative program of assisting the MDBs to develop their own environmental impact assessment programs rather than application of NEPA as implemented for domestic proposals.

APPENDIX "A"

[3195-01-M]

Title 3
The President

Executive Order 12114 of January 4, 1979

Environmental Effects Abroad of Major Federal Actions

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

Section 1.

1-1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

Sec. 2.

2-1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. *Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. *Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2-4. *Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(i);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with

relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2-5. *Exemptions and Considerations.* (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954 as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemp-

tions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2–5 do not apply to actions described in Section 3–3(a) unless permitted by law.

Sec. 3.

3–1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3–2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3–3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3–4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2–5(a)(v) does not mean or include direct loans to finance exports.

3–5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

Jimmy Carter

The White House,
January 4, 1979.

[FR Doc. 79-869
Filed 1-5-79; 3:38 pm]

APPENDIX "B"

- 7 -

ANNEX

GOALS AND PRINCIPLES OF ENVIRONMENTAL IMPACT ASSESSMENT
PRELIMINARY NOTE

Environmental Impact Assessment (EIA) 1/

EIA means an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development.

The EIA goals and principles set out below are necessarily general in nature and may be further refined when fulfilling EIA tasks at the national, regional and international levels.

GOALS

1. To establish that before decisions are taken by the competent authority or authorities to undertake or to authorize activities that are likely to significantly affect the environment, the environmental effects of those activities should be taken fully into account.

2. To promote the implementation of appropriate procedures in all countries consistent with national laws and decision-making processes, through which the foregoing goal may be realized.

3. To encourage the development of reciprocal procedures for information exchange, notification and consultation between States when proposed activities are likely to have significant transboundary effects on the environment of those States.

PRINCIPLES

Principle 1

States (including their competent authorities) should not undertake or authorize activities without prior consideration, at an early stage, of their environmental effects. Where the extent, nature or loction of a proposed activity is such that it is likely to significantly affect the environment, a comprehensive environmental impact assessment should be undertaken in accordance with the following principles.

Principle 2

The criteria and procedures for determining whether an activity is likely to significantly affect the environment and is therefore subject to an EIA,

should be defined clearly by legislation, regulation, or other means, so that subject activities can be quickly and surely identified, and EIA can be applied as the activity is being planned. */

Principle 3

In the EIA process the relevant significant environmental issues should be identified and studied. Where appropriate, all efforts should be made to identify these issues at an early stage in the process.

Principle 4

An EIA should include, at a minimum:

(a) A description of the proposed activity;

(b) A description of the potentially affected environment, including specific information necessary for identifying and assessing the environmental effects of the proposed activity;

(c) A description of practical alternatives, as appropriate;

(d) An assessment of the likely or potential environmental impacts of the proposed activity and alternatives, including the direct, indirect, cumulative, short-term and long-term effects;

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*/ For instance, this principle may be implemented through a variety of mechanisms, including:

(a) Lists of categories of activities that by their nature are, or are not, likely to have significant effects;

(b) Lists of areas that are of special importance or sensitivity (such as national parks or wetland areas), so that any activity affecting such areas is likely to have significant effects;

(c) Lists of categories of resources (such as water, tropical rain forests, etc.), or environmental problems (such as increased soil erosion, desertification, deforestation) which are of special concern, so that any diminution of such resources of exacerbation of such problems is likely to be "significant";

(d) An "initial environmental evaluation", a quick and informal assessment of the proposed activity to determine whether its effects are likely to be significant;

(e) Criteria to guide determinations whether the effects of a proposed activity are likely to be significant.

If a listing system is used, it is recommended that States reserve the discretion to require the preparation of an EIA on an ad hoc basis, to ensure that they have the flexibility needed to respond to unanticipated cases.

(e) An identification and description of measures available to mitigate adverse environmental impacts of the proposed activity and alternatives, and an assessment of those measures;

(f) An indication of gaps in knowledge and uncertainties which may be encountered in compiling the required information;

(g) An indication of whether the environment of any other State or areas beyond national jurisdiction is likely to be affected by the proposed activity or alternatives;

(h) A brief, non-technical summary of the information provided under the above headings.

Principle 5

The environmental effects in an EIA should be assessed with a degree of detail commensurate with their likely environmental significance.

Principle 6

The information provided as part of EIA should be examined impartially prior to the decision.

Principle 7

Before a decision is made on an activity, government agencies, members of the public, experts in relevant disciplines and interested groups should be allowed appropriate opportunity to comment on the EIA.

Principle 8

A decision as to whether a proposed activity should be authorized or undertaken should not be taken until an appropriate period has elapsed to consider comments pursuant to principles 7 and 12.

Principle 9

The decision on any proposed activity subject to an EIA should be in writing, state the reasons therefor, and include the provisions, if any, to prevent, reduce or mitigate damage to the environment.

This decision should be made available to interested persons or groups.

Principle 10

Where it is justified, following a decision on an activity which has been subject to an EIA, the activity and its effects on the environment or the provisions (pursuant to Principle 9) of the decision on this activity should be subject to appropriate supervision.

Principle 11

States should endeavour to conclude bilateral, regional or multilateral arrangements, as appropriate, so as to provide, on the basis of reciprocity,

notification, exchange of information, and agreed-upon consultation on the potential environmental effects of activities under their control or jurisdiction which are likely to significantly affect other States or areas beyond national jurisdiction.

Principle 12

When information provided as part of an EIA 1/ indicates that the environment within another State is likely to be significantly affected by a proposed activity, the State in which the activity is being planned should, to the extent possible:

(a) notify the potentially affected State of the proposed activity;

(b) transmit to the potentially affected State any relevant information from the EIA, the transmission of which is not prohibited by national laws or regulations; and

(c) when it is agreed between the States concerned, enter into timely consultations.

Principle 13

Appropriate measures should be estabished to ensure implementation of EIA procedures.

Note

1/ In this document an assessment of the impact of a planned activity on the environment is referred to as an environmental impact assessment (EIA).

STATEMENT OF
R. AUGUSTUS EDWARDS III
DEPUTY ASSISTANT ADMINISTRATOR FOR
EXTERNAL AFFAIRS
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON HAZARDOUS WASTES
AND TOXIC SUBSTANCES
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

June 16, 1988

Good morning, Mr. Chairman. I am pleased to be here this morning to discuss the Environmental Protection Agency's experience with the National Environmental Policy Act (NEPA) and our views concerning the environmental impact of projects funded by multilateral development banks (MDBs) in developing countries.

Late in 1987, EPA's Director of the Office of Federal Activities, Richard Sanderson, appeared before this Subcommittee to testify to our success in achieving the NEPA goal of having Federal decision-makers consider environmental issues early in the decision-making process. We now see environmental evaluations being woven into the fabric of government initiatives at all levels, and in situations where the environmental connection may be real but not obvious. This institutionalization of the consideration of environmental impacts is a development that we at EPA and our colleagues at CEQ have witnessed over the past 18 years; it has not always been easy, but we are convinced beyond any doubt that the quality of Federal decision-making is better for having done it.

We now look forward to the evolution of this type of thinking--to its wider acceptance at the international level. However, we believe we have learned much from our domestic experience, enough perhaps to admit that we do not know all the answers. I would like to proceed to give you our thoughts regarding the application of NEPA-like procedures to international development activities, and will conclude with a few general recommendations.

Multilateral Development Banks provide substantial loans to nations world-wide for large and small development projects, many of which have significant impacts on the environment. Our concern today is whether potential adverse environmental effects, means to mitigate those effects, and possible alternatives are sufficiently assessed before these projects are funded by MDBs.

In the past, MDBs were guided in many instances by a narrow interpretation of economic development. But in the long run, all of us now realize, economic decisions are sound only if they include adequate consideration of the environment. Further, project funding should take into account the needs of the future. The direction of investments, exploitation of resources, and orientation of technological development should be made consistent with future as well as present needs, as has been expressed by the U.N.-based World Commission on Environment and Development.

In the recent past there has been a growing awareness of the need to bring proposed projects under environmental scrutiny.

People and governments are increasingly aware that what happens elsewhere on the globe can have an effect on our part of it, whether it is the effect of forest destruction on global warming, or nuclear fallout from the Chernobyl catastrophe. Man's ability to alter his environment is growing too.

A number of projects which have received MDB funding have been criticized as having harmful environmental impacts, which in some cases also affected the economic viability of the projects. For example, the Anchicaya hydroelectric dam in Columbia, which received a World Bank loan, became unusable after only 7 years due to siltation and has since been abandoned. The Polonoreste project in Brazil received $ 434 million in World Bank loans between 1981 and 1984 and involved construction of a 1,500 km highway thrcugh unpopulated Amazonian rain forest. The road resulted in increased logging, displacement of native peoples and destruction of rain forest as a result of intensive settlement. Due to failures to adhere to environmental stipulations, the World Bank suspended loan disbursements for a time, but these were subsequently renewed. A similar project in Acre, Brazil, became controversial after it was found that construction of the road had started before the Inter-American Development Bank had begun its environmental assessment.

Projects such as those just described convinced the United States, as well as other donor nations, that environmental concerns need to be integrated much more effectively into MDB decision-making. Over the last few years, several initiatives

have been made to better incorporate environmental analysis in project assistance decision-making. While I defer to my colleagues from the Departments of State and Treasury to provide details, I understand that the following efforts are being made.

- The Working Group for Multinational Assistance (WGMA), where Treasury, AID and several other agencies participate in the review of about 500 MDB projects per year, has been operating over the last decade. This group advises the Assistant Secretary of the Treasury for Development Banks in instructing U.S. Executive Directors to the Banks. In the past few years, this group has become more alert to environmental concerns. While we have not been a participant in the Working Group, EPA was recently invited to become an active member, and we look forward to contributing to the decision-making process.

- The AID Early Project Notification process was established in 1982 to identify key policy and design issues, including environmental issues, in MDB projects at an early stage. This process has been enhanced to focus more effectively on environmental issues, and an informal interagency group (State, Treasury, AID) has evolved, which meets weekly to examine specific projects. We are pleased to be a part on that process now, and hope to be in a position to offer technical advice very early in the project cycle.

The Appropriations Acts for 1987 and 1988 codified emphasis on environmental concerns in the "Early Project" process. They required AID to explore developing a cooperative "Early Project"

system with other donor countries to improve coverage and to share "Early Project" information with other donors and with borrowing nations. AID now routinely solicits detailed information on potential environmental effects from its missions in 52 countries. The Early Project Notification process has identified some important environmental issues and we understand that MDBs, thus far, seem responsive to concerns raised early in the process.

- The 1987 and 1988 Appropriations Acts required the Secretary of the Treasury to instruct U.S. Executive Directors of MDBs to vigorously promote MDB commitment and improve MDB capability to perform environmental reviews. U.S. Executive Directors are also to conduct bilateral and multilateral discussions with Directors from other donor nations to promote consideration of environmental issues by donor countries.

- The Department of State and AID have been required to begin discussions with other donor nations to seek practical ways of adding environmentally trained personnel to regional MDB staffs and to provide resources toward that goal.

It should be noted that many Banks and donor nations believe that unilateral donor country actions or seconding donor country experts are not ideal long-term solutions. The Dutch have suggested that donor countries should provide additional funding for Banks to hire environmental experts onto permanent staffs, and that environmental divisions within banks should be given equal status to other Bank divisions. Thus, many countries

believe the most effective long-term solution is to institutionalize environmental expertise and priorities into MDB bureaucracies. Indeed, our own experience with NEPA suggests this is so; those making decisions must learn to consider the environment.

- Many MDBs, due to increasing awareness of environmental concerns, as well as increasing pressure from the U.S. and other countries, have begun to institutionalize consideration of environmental impacts by incorporating those factors into operational manuals or guidelines for Bank consideration of projects. While regional banks have been slower, Treasury and AID staff report that the World Bank has increased environmentally experienced staff in the past few years. Thus, while substantial improvements are still needed the bank trends appear to be in the right direction.

- The OECD is developing an environmental checklist for use by donor country decision-makers in reviewing loans. We are participating in this exercise along with Treasury, State, and AID. The OECD checklist would provide a minimum list of key environmental factors that should be taken into account by Executive Directors in voting on projects. This should not only encourage other donor nations to be alert to environmental concerns, but also push the MDBs to address those issues. Importantly, it also provides a base on which to build increasingly more effective common review criteria on environmental issues.

Here in the United States we have sought to achieve over the past 18 years the goals of the National Environmental Policy Act. It is fair to say that NEPA has matured; nearly all executive branch agencies now have in place an effective environmental review process which has proved to be a useful tool in agency decision-making. The problems of the NEPA process and court cases in the 70's have largely been solved. What we have learned is that, done properly, the NEPA process does not dictate results but rather assures full consideration of environmental issues and alternatives at a stage of decision-making early enough to be of use in shaping the project. Agencies with major natural resources impacts, such as the Federal Highway Administration, the Forest Service, and the Army Corps of Engineers, have fully institutionalized the environmental impact assessment process into their project development and decision-making processes.

EPA believes this type of ongoing consideration of environmental impacts is a needed part of the MDB decision-making process. However, we question whether NEPA, specifically, is adaptable to the MDB process or, if it is, whether the U.S. can, on its own, cause the international community to accept a legal/institutional NEPA-type process. Many countries are already adopting environmental impact assessment procedures; NEPA is the most comprehensive of these laws, although it is but one example.

Therefore, while we view aspects of NEPA as desirable for MDB decision-making, we suggest a pilot program rather than any

long-term requirements. Such a pilot environmental assessment proposal should build on and be complementary to the present program and efforts to increase environmental review capability within MDBs.

The ultimate U.S. objective is to ensure that MDBs implement stronger environmental reviews on proposed projects. The program we propose could call for the U.S. to join with environmental staffs in MDBs--providing advice, technical assistance, training, and education on the conduct of environmental analyses; and by example, cooperatively conduct specific analyses similar to those done by Federal agencies under NEPA, but without certain NEPA procedural requirements. We would work to obtain reimbursement to the extent possible should the program become more resource intensive. The process could benefit from the identification of the common elements that serve as a basis for both NEPA and similar types of requirements in other countries. Such a program, to the extent possible, should involve the U.N. Environment Programme (UNEP).

Such a plan would offer environmental analyses to inform MDB decision-making at all levels as well as guiding the actions of U.S. board members. The main objective would be to stimulate the MDBs to develop their own environmental analysis capability, eliminating the need for a separate U.S. effort. It follows that this pilot program should be temporary. We suggest a two-year program to allow banks to increase staffing and strengthen environmental units to ensure effective reviews.

We stress that the suggested program will be an ineffective, one-sided effort without coordination and a continuation of on-going efforts to improve the environmental analysis capability of the MDBs. The overall goal of the pilot program is not to alienate the MDBs or relieve them of the need to perform environmental review, but rather to promote the goal we all agree on: that the environment is on a proper footing with other factors as the MDB considers whether to finance a project.

In conclusion, Mr. Chairman, I would note that EPA has considerable experience in the implementation of NEPA. Indeed, under section 309 of the Clean Air Act we are required to review all major Federal actions--be they regulatory, legislative, or project-specific activities--for environmental protection and adequacy of documentation to that end. We would be pleased to make our expertise available to other agencies charged with meeting the concerns that this hearing addresses.

That concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions the Subcommittee may have.

* * *

STATEMENT OF
DAVID R. MALPASS
DEPUTY ASSISTANT SECRETARY
FOR DEVELOPING NATIONS
U.S. DEPARTMENT OF TREASURY
BEFORE THE
SUBCOMMITTEE ON HAZARDOUS WASTES
AND TOXIC SUBSTANCES
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

THURSDAY, JUNE 16, 1988

Mr. Chairman:

I am pleased to participate in this review of environmental reforms in the multilateral development banks. We have had a clear and strong mandate from Congress that we should act through these Banks to promote environmentally sustainable economic growth and improved management of natural resources in borrowing countries. Treasury strongly supports these objectives. Let me begin by summarizing the principal points of that Congressional mandate and then discuss what we have done to implement it in managing U.S. participation in the multilateral development banks.

The first Congressional mandate for environmental action in the multilateral development banks, which include the World Bank and three regional banks for Asia, Africa, and Latin America, was included in the Continuing Resolution Act for 1987, Public Law 99-591. This legislation provided that the Secretary of the Treasury should instruct the U.S. Executive Directors in the Banks to promote a number of very specific and detailed reforms. These reforms included:

- addition of professionally-trained staff in the Banks.
- development of plans for systematic and thorough environmental review of projects.
- creation of line units to carry out such reviews.
- establishment of multidisciplinary planning processes.
- development of plans for rehabilitation and management of ecological resources.
- involvement of health and environmental ministers and non-governmental organizations in the project preparation cycle.
- increase in the proportion of environmentally-beneficial lending.

A report detailing progress in these areas was submitted to Congress in January, 1988. I will return in a few minutes to the subjects in that report and provide some details on the progress that is being made.

The second Congressional mandate on environmental reforms was included in the Continuing Resolution for FY 1988, Public Law 100-202. This legislation restated many of the reform objectives outlined in the previous year's Continuing Resolution and made them a part of the permanent authorization legislation. It also provided for a number of other initiatives including:

- an analysis of debt/conservation swaps.
- discussions with other donors regarding personnel and financial support for environmental programs in the regional development banks.
- discussions with other executive directors in the World Bank regarding establishment of a grassroots collaboration program.
- enhancement of the early-warning system for identifying problematic loans.
- report on a comprehensive strategy to address natural resource problems.

- discussions with other executive directors in the banks regarding integrated pest management.

This legislation took effect in December, 1987. We have already begun to implement some of these initiatives but action still remains to be taken in other cases.

It is clear even from this brief summary that a great deal of legislation is already in place. I want to assure you that we are making a conscientious effort to implement it. In fact, I believe we should make implementation our primary objective at this time and not seek the passage of new law on this subject.

Within Treasury, we are working hard to improve our oversight of environmental issues in the multilateral development banks. During 1987, we objected to six loans, citing concerns about adverse environmental effects. These loans included agricultural rehabilitation in the Sudan, electric power in Peru, a paper mill in Nepal, an abattoir in Botswana, livestock development in Benin, and agroforestry and livestock development in Mali. In February of this year, we objected to a loan to Burkino Faso for a road and water project because of serious environmental issues. On another occasion, a loan proposal adversely affecting tropical moist forests was withdrawn in the face of our objection. I am confident, however, that our influence on bank activities has been far broader than these figures suggest and that other projects have been modified before they reached the Board.

We are continuing close coordination with State and AID and with environmental groups in an effort to improve the early warning system for problematic projects. We are intervening more frequently and more effectively with MDB management to make our concerns clearer at an early stage and to seek improvements in project proposals. We have for example, visited the site of a major dam project in India to examine resettlement issues. We have also notified the World Bank of concerns about a hydro-power study in Nepal at the very earliest stage, the prefeasibility stage. We are taking an active role in international meetings on environmental issues, particularly those that affect projects and programs funded by the multilateral development banks.

We have had particularly strong support from a number of non-governmental organizations in gathering information and developing approaches to increase the effectiveness of our efforts. These organizations have assisted in the preparation of standards for evaluating projects that may adversely affect tropical moist forests. They have also helped us put in place standards for projects affecting open-range savannas of Sub-Saharan Africa and are now working with us on wetlands standards. The organizations have participated in the early warning system established by AID to identify projects that may adversely affect the environment. They have worked closely with us in analyzing problems associated with specific loan proposals or with projects that are being implemented.

To sum up, we have been getting involved at an earlier stage in the project cycle, trying to make specific changes in proposals before they come to the boards of the Banks. I might add that EPA is now becoming integrally involved both in early warning group meetings and in the final review of projects just before they come to the board.

Let me turn now to implementation of some of these legislative provisions, starting with those in Public Law 99-591.

Staffing and Training

During 1987, the World Bank carried out a major reorganization of its management and staff. One of its primary aims was to strengthen the Bank's capacity for addressing environmental issues. A central environmental department was established in the Policy, Planning and Research complex. Twenty-three positions have been authorized for the three divisions in the department. In addition, environmental units have been created in the technical departments of the Bank's four regional offices. Twenty-two positions have been authorized for these four units. The Bank has appointed a new director for the Environmental Department and a new advisor for scientific and environmental affairs. Both of these individuals appear to be well-qualified and capable, with extensive backgrounds in environmental matters. In addition to 45 permanent staff positions, the Bank has indicated that it expects to use the equivalent of 18 man-years in consultant services for environmental issues during its current fiscal year.

The regional development banks need to hire more environmental specialists and to assign more staff to environmental issues. We have been encouraging them to do that. The Inter-American Development Bank has recently hired two senior environmentalists for positions at the Bank's headquarters and a third expert has been assigned to the Bank's field office in Brazil. The Asian Development Bank has had five staff members working on environmental issues; however, the chief of their environmental section has recently been recruited for the World Bank's Asian Environmental Unit and a well-qualified replacement is needed to fill that position. The African Development Bank has said that it will increase its environmental staff from two to four and that a well-qualified African candidate will be sought as Chief of the Unit. The unit is currently headed by a Norweigan official seconded to the Bank.

Significant progress has been made on training. In the World Bank, an environmental training program has been introduced for Bank staff. The program is designed to raise awareness of environmental issues in development, to convey new techniques, and to introduce the latest developments in the field. The integration of environmental and economic work and the importance of policy intervention is to be included in the curriculum of the Economic Development Institute.

The Inter-American Development Bank has initiated a series of seminars on environmental issues. The first of these seminars took place over a three-day period in December, 1987, with forty members of the Bank's technical staff participating. Two other seminars were held in early May, one for projects analysis staff and one for loan officers. Similar seminars for other members of the staff are also planned. Just last week a seminar on environmental issues was held for the heads of the Bank's field offices in borrowing countries. The African Bank has sponsored a one-day seminar on the economic valuation of environmental impacts and a two-day seminar on environmental planning in project development. A third seminar focusing on grazing issues, which have been problematic in some Bank projects, is to be scheduled for later this year. In preparing for that seminar, we are encouraging the Bank to emphasize conservation and range management issues as well as productivity.

Management Line Units

Three of the Banks have established line units to provide for a systematic and thorough review of projects affecting the environment and natural resources. As I indicated earlier, the World Bank has set up four regional units. The Asian Development Bank and the African Development Bank have established smaller units that need to be strengthened. The Inter-American Development Bank decided to create an inter-departmental Committee instead of a line unit. It reviews projects in both the preparation and implementation phases an d is advised by a senior environmental specialist. We are encouraging the Bank to establish an environmental unit in the project analysis area.

Involvement of Health and Environmental Ministers and Participation of non-Governmental Organizations

The management of the banks report that they have taken steps to emphasize the involvement of health and environmental ministries. The Asian Development Bank provides special briefing materials to its country programming teams on environmental and natural resource development projects. The environmental unit at the bank is also in contact with environmental agencies in borrowing countries regarding specific projects in the pipeline that may need assessment. The African Development Bank has issued instructions to staff for expanding consultations with health and environmental ministers.

Participation of non-governmental organizations is also being encouraged in all of the banks. In the World Bank, the focal point for relations with non-governmental organizations has been shifted from Public Affairs to Policy, Planning and Research. This shift has facilitated the exchange of views and discussions on substantive issues. A number of initiatives are also going forward on the involvement of indigenous people and local community groups. We expect to report to the Congress on some of these initiatives over the next two weeks.

In May 1987, the Inter-American Development Bank sponsored a conference on environmental issues in Latin America and the Caribbean. There was extensive participation by regional and non-regional NGOs. There was also very broad representation from public agencies throughout the region, responsible for environmental protection and natural resource conservation. A second conference is now being planned to follow up on the results of the first conference. The African Development Bank is also making plans to hold a meeting for the African NGOs during the second half of this year. Non-governmental organizations from this country with our strong endorsement and support are helping the Bank to prepare for this meeting.

The Asian Development Bank has completed a working paper on cooperation with non-governmental organizations. The paper was based on consultation with a number of those organizations. A final report is expected shortly. All of the banks are seeking to involve NGOs in borrowing countries more actively in the project cycle and to see that local community groups and other organizations are fully informed of project planning at an early stage of the cycle. In agriculture, this has involved wider contacts with farmers organizations, water user associations and women's groups.

Multidisciplinary Planning in Land Uses and Rehabilitation and Management of Ecological Resources

All of these banks have sought to incorporate new technologies, including remote sensing techniques, into efforts to encourage more effective land use planning. The World Bank has begun preparation of comprehensive environmental action plans in a number of selected countries. It is also preparing terms of reference for consultants to identify areas where multidisciplinary support can help improve project preparation.

The multilateral development banks are providing funds for national and international agricultural research programs and for science and technology programs that support research into eco-system management. The World Bank is working with Harvard University and the Institute for International Environment and Development to assess alternative approaches to natural resource management. Task forces have also been organized within the World Bank to address desertification, deforestation, industrial accident risk avoidance, protection of critical eco-systems and mitigation of natural disasters in urban areas.

New Initiatives

We have begun a number of new initiatives as a result of the Continuing Resolution that was passed in December, 1987, Public Law 100-202.

On April 13, 1988, we submitted to the Congress a report that had been requested on debt for nature swaps. An Internal Revenue Service ruling that encourages participation in such swaps was released last December. The report recommends that the World Bank place additional emphasis on working with countries to establish priorities for conservation projects, possibly piggy-backing World Bank projects onto debt for nature programs. It also looks to the Bank to take a more active intermediary role in helping to arrange debt for nature swaps and to consider starting a pilot program in a country that has indicated that it is willing to establish one.

We have been in contact with other developed countries regarding the possibility of providing environmental experts to work in the regional development banks. Environmental experts from developed countries have already been seconded to the African Development Bank. Our executive directors in all three regional banks have talked with management about how this approach might be used to enhance effectiveness on environmental issues.

We have held a series of meetings with representatives of other donor countries regarding improvements in the environmental performance of the multilateral development banks. Environmental issues were an important point of discussion at the Development Committee meeting at the World Bank in April. In May, we participated in an OECD meeting in Paris seeking agreement on common criteria for decision-makers in evaluating environmental issues in the multilateral development banks. I am pleased to say that EPA took part in the OECD meeting and that agreement was reached on a checklist for decisionmakers in both bilateral and multilateral agencies. We are hopeful of making further progresss on this issue in the months ahead.

We placed particular emphasis on environmental issues at the annual meeting of the Inter-American Development Bank in Venezuela in March, at the annual meeting of the Asian Development Bank in Manila in April and at the annual meeting of the African Development Bank in Abidjan earlier this month. All of these initiatives have been meant to involve the governments of other countries more effectively in our own efforts to improve environmental performance in the banks. I would like to provide for the record copies of the statements that we made at these meetings.

During the past year, we have worked closely with our colleagues at AID in implementing the early warning system for identifying problematic projects. We believe we can continue to enhance this system and become more influential in shaping the environmental aspects of individual loan proposals in the banks. I am hopeful that EPA participation will increase our effectiveness at this early stage of the project cycle. We are also cooperating with Greenpeace and other interested organizations in forming an informal working group to examine integrated pest management issues.

At the end of this month we will report to Congress on our discussions regarding establishment of a grassroots program to promote participation by indigenous people and local community groups in MDB project formulation. Later this Summer, we will collaborate with State and AID in analyzing more comprehensive strategies that can address natural resource problems through the multilateral development banks and in our bilateral aid program.

Application of NEPA Standards

It has been suggested that an amendment might be offered on the application of NEPA standards to multilateral development bank lending. As I understand the suggestions that have been made, they would require the preparation of environmental impact statements or environmental assessments. In the absence of such statements, it is my understanding that we would have to oppose any MDB loan that might come up for consideration.

I support strict environmental review of MDB projects. However, I would strongly oppose enacting the application of NEPA standards. We are most effective in the Banks when we have latitude and can work to enlist the support of other countries on specific issues. I believe the application of NEPA standards would paralyze our ability to act cooperatively and constructively with other member countries. It would reduce our effectiveness in promoting environmental reform in the banks and prevent us from making further progress toward environmental objectives set forth in the legislation. It could also set back some of the progress we have already made and that I outlined earlier.

NEPA is, in large part, a process designed to fit into the administrative and legal systems of the United States. It does not take account of legal and administrative differences between the United States, other countries, and international organizations. It does not consider the legal and administrative structures within which we operate in these organizations. It does not reflect the reality under which the United States has to conduct its relations with other countries and organizations.

The difficulty of applying NEPA standards to international activities was first recognized when Executive Order 12114 was signed by President Carter in 1979. This Executive Order specifically excluded from any form of NEPA standards "U.S. Government votes and other actions in international conferences and organizations." I believe that exemption should be continued.

U.S. voting power varies widely in the multilateral development banks. We have 18 percent in the World Bank, 34.5 percent in the IDB, 16.6 percent in the ADB; and 5.8 percent in the AFDB. I am particularly concerned about how NEPA dictated U.S. votes would be perceived in the AFDB, where our voting share is lowest.

Africa has the most pressing developmental problems in the world. Hundreds of thousands of its people perished in the famines of the the early 1980s. More than a million people are now thought to be at risk again. Africa also has very serious environmental problems: over-grazing, deforestation, desertification and threats to wildlife and their habitat.

Obviously, development and environment are linked very closely together. The focus of our efforts should be on finding the innovative and creative approaches that are needed to achieve substainable development objectives. A stream of automatic abstentions on environmental grounds would not help us in these efforts in the African Development Bank. Yet, the application of NEPA standards might well require blanket opposition to AFDB projects if data were not available or if a particular standard could not be met at a certain time.

I am not arguing against objecting to MDB loans on environmental grounds. As I said earlier, we have already done so on a number of occasions. Those actions were very helpful in focusing attention on specific environmental issues and in promoting positive changes. However, a stream of automatic U.S. abstentions because of failure to meet NEPA standards for environmental assessments would send a different message to the AFDB and its member countries and it would produce a different result. We would, in effect, be opting out of the action, not only on environmental issues but on other critical issues as well.

To sum up, Mr. Chairman, I am all in favor of strict environmental review, aimed at sustainable growth and development, for MDB projects in developing countries. That is what we have been trying to accomplish under existing legislation and I believe we have made substantial progress. The application of NEPA standards would not advance that progress. In my view, it could very likely set back the progress that has already been made.

There is extensive environmental legislation on the books. We have supported that legislation and made a strong effort to see that its provisions are implemented in the multilateral development banks. I believe we need to give that legislation a chance to work.

Our immediate objective is further progress on environmental reforms in the multilateral development banks. Beyond that, we look to strengthening the systems for environmental review in borrowing countries. A cooperative and constructive approach that gets support from other countries is the most productive way for us to proceed.

TESTIMONY OF

WILLIAM A. NITZE

DEPUTY ASSISTANT SECRETARY OF STATE

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL

AND SCIENTIFIC AFFAIRS

JUNE 16, 1988

HEARINGS BEFORE THE SUBCOMMITTEE ON

HAZARDOUS WASTES AND TOXIC SUBSTANCES

COMMITTLE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

Thank you Mr. Chairman and good morning. I am pleased to testify before your committee this morning on the subject of applying the National Environmental Policy Act (NEPA) authorities to U.S. participation in actions of international financial institutions. The U.S. plays a strong leadership role in the multilateral development banks (MDBs), and has made substantial financial contributions to them since their inception.

Clearly, the MDBs play a critical, if not primary role, in the development process. In general, their lending has been very beneficial for the recipient countries. MDB-assisted projects range from institution building in education and health fields to large infrastructure projects such as roads and electric power plants.

Development is, of course, the mandate. But we must recognize and ensure that the development we achieve is sustainable. If projects are not planned initially with a

concern for environmental impacts and effective management of natural resources, we may all suffer adverse impacts in the future. We must minimize the possibility that a country's resource base may suffer permanent damage, that adverse health effects may occur, and that future development may be undermined and costs significantly increased.

Poor planning, often caused by the pressure for short-term economic benefits, can cause irreparable damage to soils and forests or result in projects which cannot be sustained. There is much scientific and economic evidence that truly sustainable development can only be built on a foundation of careful resource management which integrates environmental considerations into overall planning efforts.

The Congress, in response to growing public concern, has recently passed legislation intended to make the MDBs more sensitive to environmental concerns. The State Department strongly supports these efforts and is working closely with

congressional committees, the NGOs, and other federal agencies to ensure that MDBs promote environmentally sound projects in developing countries.

I would submit, Mr. Chairman, that there are a number of international activities which show that there is strong and growing momentum in this area. We have begun to see results from our efforts to increase awareness through discussions in international fora and bilaterally with other countries to influence bank policies, as well as with MDB officials themselves. These efforts have been mounted on a number of levels.

At the project level, A.I.D.'s Early Project Notification (EPN) system alerts 53 A.I.D. missions and U.S. embassies around the world to proposed MDB projects. This notification comes while these projects are still in the planning stages. It is our conviction that this is the correct time and place to begin assessing the effects of proposed projects.

Mission assessments from the EPN system are passed by A.I.D. and State to our colleagues in other agencies and to the offices of our U.S. Executive Directors for their information. Where necessary, mission suggestions and concerns are passed along to Bank staffs. This process has proven tremendously helpful in alerting the U.S. Government to environmental concerns.

The principal forum for interagency deliberations is the Working Group on Multilateral Assistance (WGMA). This working group is charged with reviewing and commenting on individual project proposals for MDB loans and related documents. It meets weekly to identify problems and issues for resolution. Through this process, the U.S. thoroughly assesses certain categories of loans for adverse environmental impacts and develops guidance to be followed by U.S. Executive Directors of the banks in evaluating loan proposals. A separate working level inter-agency group meets weekly to coordinate the U.S. Government's strategy on MDB reform.

In addition, A.I.D., under the Foreign Assistance Act, takes fully into account the environmental consequences of any proposed program or project which may significantly affect the environment of the country concerned. The Agency engages host country decision-makers in a full discussion of significant environmental effects of a proposed program or project prior to making a decision whether to proceed.

Reflecting increased public and Congressional concern for the environmental effects of MDB lending, the State Department has initiated discussions of common environmental concerns with other governments. Recently, in compliance with Congressional legislation, the Department held discussions with MDB donor countries and with bank executives on providing resources to the three regional MDBs to strengthen their environmental staffs and requested their views on strengthening the capacity of bank staffs to conduct environmental and socio-cultural assessments.

All donor countries who have responded to date favor increased support of the MDBs to ensure in-depth analysis of environmental and socio-cultural implications of loan projects. At the same time there is a strong feeling among these countries that environmental assessments and staffing are the primary responsibility of the banks, and that secondment of specialists from donor countries is not sufficient to ensure thorough environmental reviews of projects.

Several countries, including Norway, Italy and the U.S., have begun to second staff to the banks, recognizing the immediate need to ensure that bank loan assessments include environmental review. The regional banks are following the lead taken by the World Bank to increase staff in environmental and socio-cultural analysis. However, progress in these banks has been relatively slow.

We have initiated a dialogue with principal donor countries offering to share information from our early warning system and

suggesting a cooperative effort to ensure environmental safeguards on MDB projects. These countries have responded favorably. We are currently encouraging the Organization for Economic Cooperation and Development (OECD) to adopt an environmental checklist which could be used in conducting project reviews by countries as well as the banks. Last June, the Governing Council of the United Nations Environment Programme (UNEP) adopted "Goals and Principles of Environmental Impact Assessments" consistent with NEPA and E.O. 12114. Formulation of the goals and principles was initiated by the U.S., taking into account strong Congressional interest.

The State Department is presently designing a comprehensive strategy for maximizing the use of foreign assistance provided by the U.S. through multilateral and bilateral development agencies to address natural resource problems such as desertification and tropical deforestation. This report will be provided to the Congressional Committees on Appropriations.

In our efforts to bring about environmentally-sound development, we have been guided by a few foreign policy principles. First of all, we believe that the multilateral development banks themselves must be responsible for assessing the environmental effects of their projects. We are working to strengthen the environmental departments within the banks, so that they will factor environmental and sustainable development concerns into their decision-making process. We strongly endorse the steps already taken by the World Bank to strengthen the Bank's capacity for addressing environmental issues by establishing central and regional environmental units.

Ideally, host countries themselves should design projects which are environmentally sound and developmentally sustainable. Rather than have solutions imposed from external sources, we believe that long-term efforts should aim at host country design which does not need outside supervision. We must not divert our efforts or attention from this objective.

Secondly, we believe that development banks must be reformed multilaterally. No one country, including the United States, has the capability to change the policies of the banks alone. This is why our efforts have stressed coordination among other bank donors. Only by pooling our efforts with other countries can we bring about the changes necessary to ensure that development projects funded by the MDBs are environmentally sound. For us to abandon this multilateral approach in favor of unilateral alternatives could take pressure off the banks to restructure. We are concerned that our efforts will become less effective if the voting power of our Executive Directors on environmentally sensitive loans is for all intents and purposes paralyzed. This could end the collaborative approach that is indispensable for the efficient operation of international organizations.

A third principle we have followed is to keep solutions to environmental concerns free of political considerations. Any move by one country, such as the U.S., to be impose its own environmental procedures on MDB's would immediately expose the U.S. to charges that our efforts are politically motivated, and that our treatment of other countries is guided solely by our own interests.

We believe that E.O. 12114 strikes the appropriate balance in extending NEPA requirements to certain major Federal actions with a potentially significant environmental effect outside of the U.S. while not requiring votes and other actions in mulilateral organizations.

It should be clear by now that the proposal to extend NEPA legislation to the MDBs marks a deviation from these general principles by which we have tried to increase environmental support to the banks. I think that everyone here today shares

the same goal, which is to ensure thoughtful consideration and thorough environmental review of mulilateral actions and projects.

The question is how to best meet this goal. The Department supports U.S. efforts to assist the environmental staffs of the MDB's by providing technical assistance, training and advice on the conduct of environmental analyses. The U.S. should be prepared to participate with MDB staffs in programs to develop an MDB environmental assessment process similar to that followed by Federal agencies under NEPA, but without certain NEPA procedural requirements. Similar proccesses in other countries should also be examined as precedents. To the extent possible, UNEP should also be invited to participate in this process.

Thank you very much Mr. Chairman for allowing me to discuss our current efforts at MDB reform.

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STATEMENT OF LARRY WILLIAMS

INTERNATIONAL REPRESENTATIVE

SIERRA CLUB

BEFORE THE SENATE SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

REGARDING U.S. INTERNATIONAL ACTIVITIES AND

COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

MAY 10, 1988

I am Larry Williams, International Representative of the Sierra Club. Prior to joining the Washington staff of the Sierra Club, I was a member of the policy staff at the Council on Environmental Quality between 1978 and 1981. We are pleased that this subcommittee is taking this opportunity to examine whether the National Environmental Policy Act (NEPA) requires U.S. governmental agencies to comply with this act when agency actions involve other countries, such as grant-making, consultation, policy making. The answer to this question would, of course, have a direct impact on the U.S. Treasury Department's voting on multilateral development projects.

There are actually two questions that need to be addressed today regarding NEPA. One, should international activities of U.S. agencies fall under the requirement of NEPA? We believe that NEPA does apply. If this Subcommittee agrees with us on this first question, then the second question to address is whether Congress should give special treatment under NEPA for how the Treasury Department applies this law to the votes it casts on the Board of Executive Directors of the multilateral development banks (MDBs).

I would like to first address the question of whether or not all federal activities that effect the quality of the human environment outside the boundaries of the U.S. are covered under NEPA. As this Subcommittee is

well aware, since the passage of NEPA[1], almost all federal agencies have restructured their decision-making process in order to avert unintended injury to nature and man within the territorial jurisdiction of the United States.[2] But what about U.S. activities outside our boarders? NEPA expressly states that its purposes include the promotion of "efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man..."[3] It should be clear to all that the "biosphere" embraces all living organisms, including man, whether found on the solid earth, in the waters, or in the atmosphere of our planet.[4] In the Declaration of National Environmental Policy, the Congress gave explicit recognition to "the profound impact of man's activity on the interrelations of all components of the natural environment" and has declared it to be the

> continuing policy of the Federal Government ...to use all practicable means...to create and maintain conditions under which man and nature can exist in productive harmony...[5]

There is nothing in the Act to indicate that the federal government must be concerned only with environmental impacts of its actions within the United States. NEPA states that "all agencies of the Federal Government shall"[6] act to protect the biosphere.

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[1] National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852, 42 U.S. C. § 4321-74 (1970).

[2] Robinson, Extraterritorial Environmental Protection Obligations of Foreign Affairs Agencies: The Unfulfilled Mandate of NEPA, 7 N.Y.U. J. Int'l L. & Pol. 257,266 (1974) [hereinafter "Robinson"]

[3] NEPA § 2,42 U.S.C. § 4321 (1970).

[4] Webster's Third New International Dictionary (unabridged) (1968) defines "biosphere" as follows:
1. The part of the world in which life can exist including parts of the lithosphere, hydrosphere and atmosphere. 2. Living beings together with their environment.

[5] NEPA § 101(a), 42 U.S.C. § 4331 (a) (1970).

[6] NEPA § 102 (2), 42 U.S.C. § 4332 (2) (1970).

Sierra Club v. Atomic Energy Commission

In 1974, the Sierra Club brought suit against the Atomic Energy Commission (AEC)[7] "to compel the Atomic Energy Commission, Eximbank, and the State Department to file a NEPA impact statement with respect to an export program under which the U.S. would sell nuclear power generating systems and enriched nuclear fuels to other countries".[8] After the suit was initiated, the AEC decided to prepare a NEPA statement on the nuclear power export process. The AEC then joined the State Department in recognizing NEPA's applicability to its activities. The Court expressed recognition of NEPA's all-inclusive mandate by declaring that "NEPA makes no exceptions in directing 'all agencies of the Federal government' to comply with its provisions".[9]

Sierra Club v. Department of Transportation

Another suit I want to mention concerned Sierra Club v. the Department of Transportation (DOT).[10] The issue was over the need for DOT to write an environmental impact statement (EIS) prior to constructing a link of the Inter-American Highway between Panama and Colombia through the Darien Gap. This project was authorized in an amendment to the Federal Aid Highway Act of 1970 which directed the Secretary of DOT to cooperate with Panama and Colombia in the construction of the highway "in the location known as the 'Darien Gap'".[11] In that case, the Sierra Club held that the construction of the highway through the Darien Gap would lead to uncontrolled destruction

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[7] Sierra Club v. Atomic Energy Commission, No. 1867-73 (D.D.C. August 3, 1974).

[8] ibid, Robinson.

[9] Civil No. 1867-73.

[10] Sierra Club v Coleman, 405 F. Supp. 53, 421 F. Supp. 63, D.C. District Court 1975. Sierra Club v. Adams, 578 F. 2b 389 (D.C. Circut Court 1987).

[11] 23 U.S.C. § 216 (a) (1970).

of the tropical forest. Immigration and colonization would result in an area which is ill suited for conventional farming, grazing of livestock, and human habitation due to the very poor soils. The result would be "severe and soon devastating effects" of a very exceptional rain forest known for its richness of flora and fauna. The ultimate result would be the destruction of the Cuna and Choco Indians' way of life "who maintain a precarious existence in upper valleys of rivers in the Darien area".[12] As a result of this legal action, the DOT proceeded with the preparation of an EIS for the Darien Gap.

We believe that a strong case can be made that NEPA does indeed apply to U.S. agencies' activities outside the U.S. which have a major impact on the quality of the human environment. We now have almost twenty years of experience with the requirements of NEPA. We think the law works very well. In fact, the NEPA process works so well that many other countries have adopted, or are considering the adoption of, an environmental assessment process much like ours. When I attended a meeting in Paris last fall of the Environment Committee of the Organization of Economic Cooperation and Development (OECD), I was very surprised to hear how accepted our environmental assessment process had become. At this meeting, the representatives of the OECD member countries and representatives of the lesser developed countries were discussing how to put the environmental assessment process to work when designing development assistance projects for the Third World. To my astonishment, a majority of the First and Third World representatives agreed that not only would the environmental assessment process be helpful and was needed, but that the Scoping process should also be included as an important part of the process! (I was spared a great embarrassment by not jumping into this discussion early on to explain what Scoping is.)

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[12] Letter from H.A. Lindberg, Assoc. Adm'r for Engineering and Traffic Operations, Dep't of Transp., to Lenard C. Meeker, Center for Law and Social Policy, Washington, D.C., Oct. 9, 1974.

The Congress, through NEPA and the Multilateral Investment Guarantee Agency (MIGA)[13] legislation of last year, has already stated that we must take a greater responsibility for our activities which occur outside our national boundaries. To date, the message has not been clearly understood. It is time that the Congress makes it clear that NEPA applies to all federal agencies' actions which have a major impact on the human environment.

I think that Professor Nicholas Robinson's comments in his article, "Extraterritorial Environmental Protection Obligations of Foreign Affairs Agencies: The Unfulfilled Mandate of NEPA", sums up this issue very well:

> In the final analysis, the issue of how foreign affairs agencies comply with NEPA does not involve interference in the affairs of other nations. Rather, the aim is to assure that the United States itself is never responsible for unanticipated environmental injury anywhere. NEPA provides a restraint on U.S. action, not on the actions of other countries. How to assess environmental impact abroad may itself raise legitimate questions of methodology, but not of purpose. The goal of NEPA must be uniform if its scientific bases is to be given effect; the activities of federal agencies must be carried out only with as full an awareness as possible of their impact on the systems of the biosphere. Eventually, the foreign affairs agencies may come to appreciate this teaching.[14]

We urge the Congress to make it clear that all federal overseas activities which have a major impact on the environment should fall under the requirements of NEPA.

Recall that it is the policy of the federal government under NEPA to "prevent or eliminate damage to the environment and biosphere". What then could be more appropriate and timely than for the Congress to reassert those policies as stated in the National Environmental Policy Act which would

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[13] H.R. 3750, the Multilateral Investment Guarantee Agency, adopted in the FY 1988 Continuing Resolution, (H.J.R. 395), December 1987.

[14] Robinson

recognize that many of the international activities of the United States, both directly and indirectly, effect "the health and welfare of man...."[15]

Background: Environmental Organizations, Department of Treasury, and the MDBs

I would now like to turn to the second regrading of how the Treasury Department should respond to the environmental assessment process. To begin, I believe it would be helpful at this point to give the Subcommittee some background regarding our involvement in the MDB development issue. I hope that this will provide a better understanding of our relationship with Treasury regarding the MDBs.

The Sierra Club has been working the past four years with four other national conservation organizations (i.e. National Wildlife Federation, Natural Resources Defense Council, Environmental Defense Fund and the Environmental Policy Institute) in a joint effort to reform the lending practices of the MDBs. It is the aim of our organizations to ensure that MDB funded development loans are environmentally sustainable and do not cause undue harm to the natural resource base of the developing countries.

In December 1984, at the conclusion of many months of hearings on the environmental and social impacts of the MDBs, the House Subcommittee on International Development Institutions and Finance, Committee on Banking, Finance and Urban Affairs adopted a set of recommendations to the U.S. Treasury Department. The recommendations directed the Agency to press the MDBs to instigate major reforms in their lending practices. The recommendations called for a permanent Treasury Department staff position "to monitor environmental aspects of bank activities, to facilitate constructive U.S. involvement in assuring that sound environmental policies are implemented by multilateral lending agencies supported by the U.S., and to expedite the flow of information between the banks and U.S. Congress, other relevant

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[15] NEPA S 2, 42 U.S.C. § 4321 (1970).

federal agencies, and the public regarding environmental consideration".[16] The recommendations also called for increased environmental staffing within the banks, and consultation with environmental ministries and non-governmental organizations within the borrower countries. Lastly, they called for the establishment of criteria upon which the U.S. could judge the environmental and social implications of proposed Bank projects prior to the U.S. vote being cast for a major project which would effect the quality of the environment.

In subsequent years, the Foreign Operations Subcommittee of the Appropriations Committee has incorporated its own version of the House Banking Subcommittee recommendations into its yearly funding bill. The next step came in 1987, when the Congress adopted the MIGA legislation, which put into law many of the reforms called for in the 1984 recommendations of the House Banking Subcommittee and the yearly appropriations bills. Prior to passage of the MIGA legislation, the Treasury Department and representatives of the five environmental organizations worked closely with members of the Congress to insure that the final language relating to the environmental performance of the MDBs was acceptable to all parties. I have attached a copy of Title XIII, "The Environment" of MIGA, to my statement. I would like to call this Subcommittee's attention to Section 1303 in this title:

> Sec. 1303. (a)(1) In the course of reviewing assistance proposals of the multilateral development banks, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that other agencies and appropriate United States embassies and overseas missions of the Agency for International Development are instructed to analyze, where feasible, the environmental impacts of multilateral development loans well in advance of such loans' approval by the relevant institutions to determine whether the proposals will contribute to the sustainable development of the borrowing country.

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[16] Recommendations of the U.S. House of Representatives Subcommittee on Int'l. Development Inst. and Finance, Committee on Banking, Finance and Urban Affairs, December 1984, #2.

(2) To the extent possible, such reviews shall address the economic viability of the project, adverse impacts on the environment, natural resources, public health, and indigenous peoples, and recommendations as to measures, including alternatives, that could eliminate or mitigate adverse impacts.

(3) If there is reason to believe that any such loan is particularly likely to have substantial adverse impacts, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that an affirmative investigation of such impacts is undertaken in consultation with relevant Federal agencies. If not classified under the national security system of classification, the information collected pursuant to this paragraph shall be made available to the public.

MDB Project Information Availability and the Early Warning System

Through MIGA, the Congress has already instructed the Treasury Department to carry out an environmental analysis of each MDB project which might have a major effect on the environment, public health and/or indigenous peoples. The difficulty is that Treasury has no reliable means of obtaining timely information concerning the probable environmental impacts of proposed Bank projects directly from the MDBs prior to the time the project comes before the Board of Executive Directors. Therefore, the Treasury Department relies on U.S. AID's Early Project Notification System, with its extensive network of missions as an early warning system for MDB projects. The Early Warning System is a cooperative system for tracking proposed MDB projects through AID's missions located in the developing world and through embassies where there is no AID mission. Sadly, this is the primary means our government has of gathering advance information on MDB projects so that the U.S. can cast an informed vote on the Board of Executive Directors.

The Early Warning System is very useful, but it does have its limitations. I discussed the Early Warning System with the staff of AID missions in Rwanda, Kenya, Sudan, Botswana and the Ivory Coast during my travels in

Africa over the past year. I heard universal complaints from mission staff that they frequently did not hear of pending projects until the project was well into the planning process. The staff also complained that they often did not have the time or the means to properly evaluate proposed MDB projects.

If further investigation of a project seems warranted, Treasury and AID, with the help of State, will approach the Bank that is working on the project proposal. Additional information and documents which might help in the evaluation process are then cajoled out of the officials. All too often, the MDB will respond by telling the U.S. government that the information cannot be released because it is privileged information between the donor government and the Bank. Our government then has two options. Our representatives to the Banks must either try to learn more about the project in advance by going through the back door of the MDB and to NGO representatives here and abroad, or wait for the loan documents when the loan goes before the Bank's Board of Executive Directors for approval.

The disadvantage of waiting until the loan goes to the Board for approval is that the executive directors receive the project appraisal reports only two weeks prior to the vote. In theory, the executive directors review each project and determine whether or not it merits financing. In practice, however, most executive directors do not have the staff or resources necessary to examine the project files for problems, criticism, or data that are omitted from the Staff Appraisal Reports. The Board of Executive Directors, therefore, often functions as a rubber stamp. Most executive directors have standing instructions from their countries to vote for all projects unless they receive specific instructions to the contrary. Since the time lap is only two weeks between receiving the loan documents and having to cast a vote, it is all but impossible for the executive directors to get the information to their countries in sufficient time for all the documents to be reviewed. It would be far better if environmental problems associated with a proposed project were openly dealt with and resolved by all concerned well in advance of it coming to the Board for a vote.

The difficulty of obtaining MDB project documents is well illustrated from a recent experience of mine. The Sierra Club and the Natural Resources Defense Council were recently invited by the government of Botswana to visit that country to examine the environmental effects of the World Bank funded livestock project. It is a project which we have criticized. Prior to my departure, the Treasury Department and AID tried to obtain a copy of a World Bank funded economic study on livestock grazing in Botswana.[17] This report would have been very useful to refer to prior to our trip. Predictably, all the might of the U.S. Government could not dislodge a copy of this report from the firm grip of the World Bank. The Bank claimed that the Government of Botswana would not allow them to release this document. When I told the Botswana Minister of Local Government and Land, P.K Balopi, of the difficulty our government was having in obtaining a copy of this study, he let out a big laugh as if that was the funniest story he had ever heard. He said we were welcome to have a copy of the document along with any other final MDB document pertaining to Botswana. As a result, Minister Balopi recently signed a letter of agreement between his Ministry, the Sierra Club and the Natural Resources Defense Council, which includes the following clause:

> Botswana is perfectly happy for NRDC and the Sierra Club and other organizations of similar concern to be given copies of final reports that have been accepted by Botswana Government in relation to projects, studies and policies. We are also willing to reassure donors that such reports can be supplied by them for...[balance of sentence cutoff in FAX transmission from Botswana.][18]

Under the current arrangement, the Treasury Department is being asked to evaluate and cast informed votes on some 300 MDB projects a year. These votes are based on project lending documents which are only briefly available prior to the vote and whatever information Treasury and State can

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[17] National Land Management and Livestock Project - Incentives/Disincentives Study, Vols. I-III, McCowan International and Coopers & Lybrand, October 1987, Gaborone, Botswana.

[18] Letter to Mr. Larry Williams, Sierra Club and Mr. David Wirth, Natural Resources Defense Council from Minister P.K. Balopi, Ministry of Local Government and Lands, Gaborone, Botswana, April 28, 1988.

come up with through the AID missions or the non-governmental organizations. What we have is a horse and buggy information gathering system which relies on far too little information upon which some very big decisions must be based. Much more complete and timely information is badly needed by all of the donor countries, not just the U.S., given the huge impact these Bank projects have on people's lives and the natural resources of the Third World.

Clearly, more complete and punctual information is needed on the environmental and social impacts of MDB projects well in advance of the funding decision process. It is also clear that the U.S. Treasury Department should not be exempted from NEPA. The real question is: how can Treasury comply with the requirements of NEPA given that MDB projects are located in far away places all over the Third World?

It is not our desire to require Treasury to write some 200 environmental impact statements a year. Treasury could never be expected to have the staff resources to develop the information for an EIS on its own. The Banks themselves are the only logical way that the information is going to be provided. It is our opinion that the Treasury Department needs to be given enough lead time to comply with NEPA (i.e., 1991) before it is precluded from voting on MDB projects which appear to have a major impact on the environment. The Bank's will not want to see the U.S. cut out of the decision making process and will thus supply the needed documentation to Treasury in a form that complies with the provisions of NEPA. It is our opinion that the MDBs cannot afford to allow a situation to develop which would cut the U.S. out of full participation on the Board of Executive Directors.

However, the exact manner in which Treasury should be directed to comply with NEPA is a very big question. We do not think it is realistic to ask Treasury to file a draft and final EIS and to be obliged to comply with many of the other NEPA and the CEQ regulations which are required for agencies which are more directly in control of U.S. activities outside our boarders which have a major impact on the environment. We take this

position because Treasury is only in the position of evaluating proposed projects which have been designed by the MDBs and the borrower country and, therefore, does not have direct access the project impact information.

We suggest that the Congress amend Section 203 (the Office of Environmental Quality) of the Environmental Quality Improvement Act of 1970[19], rather than NEPA, by directing the Council on Environmental Quality to develop procedures within one year after the passage of this act to establish an environmental assessment process for the Treasury Department to follow prior to voting on MDB funded development projects.

We are sure that the information provided through this assessment process will be very welcome by the people who would be directly affected by the proposed projects, the other MDB donor nations, and all of us who are concerned about the adverse environmental impacts the First World is having on the Third World.

In conclusion, we also urge this Subcommittee to place into law the 1977 Executive Order[20] directing CEQ to develop regulations for federal agencies to follow in implementing the provisions of NEPA. This important Executive Order should not be left to the whims of the present or future administrations, to choose to abide, repeal, or alter in ways that might undermine the integrity of the NEPA process.

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[19] Pub.L. 91-224, 42 U.S.C. 4371-4374, April 3, 1970.

[20] Executive Order 11514, as amended by EO 11991 (Secs. 2(g) and 3(h)), May, 1977, Protection and Enhancement of Environmental Quality

APR 28 '88 12:21 WHENAE SERVICES

TELEPHONE 353911/8
TELEGRAMS: MEDAFE
REFERENCE: LG 2/20/19 II(118)

REPUBLIC OF BOTSWANA

MINISTRY OF LOCAL GOVERNMENT AND LANDS
PRIVATE BAG 006
GABORONE
BOTSWANA

28th April, 1988

D Wirth
National Resources Defence Council
1350 New Your Avenue N.W.
WASHINGTON DC 20005

L. Williams
The Sierra Club
330 Pennsylvanian
SE
WASHINGTON DC 20003
U.S.A.

Dear Mr. Wirth and Mr. Williams,

I must apologise for the delay in communicating with you, following your recent visit to Botswana, as I know you were anxious to have some written understanding by the time you returned to Washington.

However, I felt it would be most appropriate if I broadened the understanding by consulting with the other relevant Ministries and with my Cabinet colleagues. I have now completed this process and I am happy to be able to write and confirm the following points:

1. Botswana is willing to exchange information, expertise and views with National Resources Defence Council, the Sierra Club and other organisations of similar concern in order to assist Botswana's efforts to encourage sound land management, environmental conservation and a proper regard for the environment in its development projects.

2. Given Botswana's specific concern in relation to rangeland degradation and allied problems, we are also willing to exchange information, expertise and views on the following items:-

   - implementation of the National Land Management and Livestock Project
   - implementation of policies to encourage sound land management on Tribal Grazing Land Policy ranches and the communal areas
   - adoption and implementation of the National Conservation Strategy
   - implementation of the recommendations of the study on incentives and disincentives in the livestock sector
   - improving the National Development Bank's monitoring and enforcement of loan conditions for TGLP ranches and
   - education and training of environmental professionals.

3. Botswana is perfectly happy for NRDC and the Sierra Club and other organisations of similar concern to be given copies of final reports that have been accepted by Botswana Government in relation to projects, studies and policies. We are also willing to reassure donors that such reports can be supplied by them for

I would also like to confirm that we would be grateful for your help, if we so require it, in obtaining financial and/or technical assistance for projects and programmes under our own auspices or under Non Government auspices. Such assistance may well be requested in relation to the National Conservation Strategy, where we will be specifically interested in promoting conservation; diversifying rural employment; developing tourism; planning good urban environments; utilising wildlife; and promoting sustainable livestock development, amongst other things.

I do hope you find these points a satisfactory basis on which we can build mutual cooperation and benefit. We certainly enjoyed your visit and the chance it provided to have valuable discussions and to show you something of Botswana. We look forward to continuing the dialogue.

Yours sincerely,

P.K. Balogi
HONOURABLE MINISTER

MDB's Env. Leg. Passed CR 12-87

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(pp. 141 - Conference Report)

100TH CONGRESS
1ST SESSION

H. R. 3750

To provide for further participation by the United States in the International Development Association, the Asian Development Fund, and the African Development Bank, for membership for the United States in the Multilateral Investment Guarantee Agency, for United States acceptance of the merger of the capital resources of the Inter-American Development Bank, for United States approval and acceptance of a proposed amendment to the Articles of Agreement of the International Bank for Reconstruction and Development, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 1987

Mr. McHugh introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

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A BILL

To provide for further participation by the United States in the International Development Association, the Asian Development Fund, and the African Development Bank, for membership for the United States in the Multilateral Investment Guarantee Agency, for United States acceptance of the merger of the capital resources of the Inter-American Development Bank, for United States approval and acceptance of a proposed amendment to the Articles of Agreement of the International Bank for Reconstruction and Development, and for other purposes.

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"TITLE XIII—THE ENVIRONMENT

"SEC. 1301. The Congress finds that—

"(1) United States assistance to the multilateral development banks should promote sustainable use of natural resources and the protection of the environment, public health, and the status of indigenous peoples in developing countries;

"(2) multilateral development bank projects, policies, and loans have failed in some cases to provide adequate safeguards for the environment, public health, natural resources, and indigenous peoples;

"(3) many development efforts of the multilateral development banks are more enduring and less costly if based on consultations with directly affected population groups and communities;

"(4) developing country governments sometimes do not ensure that appropriate policies and procedures are in place to use natural resources sustainably or consult with affected population groups and communities, where costs could be reduced or benefits made more enduring; and

"(5) in general, the multilateral development banks do not yet provide systematic and adequate assistance to their borrowers to encourage sustainable resource use and consultation with affected communities.

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where costs could be reduced or benefits made more enduring.

"SEC. 1302. The Secretary of the Treasury and the Secretary of State, in cooperation with the Administrator of the Agency for International Development, shall vigorously promote mechanisms to strengthen the environmental performance of these banks. These mechanisms shall include strengthening organizational, administrative, and procedural arrangements within the banks which will substantially improve management of assistance programs necessary to ensure the sustainable use of natural resources and the protection of indigenous peoples.

"SEC. 1303. (a)(1) In the course of reviewing assistance proposals of the multilateral development banks, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that other agencies and appropriate United States embassies and overseas missions of the Agency for International Development are instructed to analyze, where feasible, the environmental impacts of multilateral development loans well in advance of such loans' approval by the relevant institutions to determine whether the proposals will contribute to the sustainable development of the borrowing country.

"(2) To the extent possible, such reviews shall address the economic viability of the project, adverse impacts on the environment, natural resources, public health, and indigenous peoples, and recommendations as to measures, including alternatives, that could eliminate or mitigate adverse impacts.

"(3) If there is reason to believe that any such loan is particularly likely to have substantial adverse impacts, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that an affirmative investigation of such impacts is undertaken in consultation with relevant Federal agencies. If not classified under the national security system of classification, the information collected pursuant to this paragraph shall be made available to the public.

"(b) The Secretary of the Treasury shall instruct the Executive Directors representing the United States at the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank to urge the management and other directors of each such bank, to provide sufficient time between the circulation of assistance proposals and bank action on those proposals, in order to permit their evaluation by major shareholder governments.

"(c) Based on the information obtained during the evaluation referred to in subsection (a) and other available information, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall identify those assistance proposals likely to have adverse impacts on the environment, natural resources, public health, or indigenous peoples. The proposals so identified shall be transmitted to the Committee on Appropriations and the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate, not later than June 30 and December 31 of each year following the date of enactment of this title.

"(d) The Secretary of the Treasury shall forward reports concerning information received under subsection (a) to the Executive Director representing the United States in the appropriate bank with instructions to seek to eliminate or mitigate adverse impacts which may result from the proposal.

"SEC. 1304. The Secretary of the Treasury, in consultation with the Secretary of State and the Administrator of the Agency for International Development, shall create a system for cooperative exchange of information with other interested member countries on assistance proposals of the multilateral development banks.

"SEC. 1305. The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to support the strengthening of educational programs within each multilateral development bank to improve the capacity of mid-level managers to initiate and manage environmental aspects of development activities, and to train officials of borrowing countries in the conduct of environmental analyses.

"SEC. 1306. (a) The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vigorously and continuously urge that each bank identify and develop methods and procedures to insure that in addition to economic and technical considerations, unquantified environmental values be given appropriate consideration in decisionmaking, and include in the documents circulated to the Board of Executive Directors concerning each assistance proposal a detailed statement, to include assessment of the benefits and costs of environmental impacts and possible mitigating measures, on the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided if the proposal is implemented, and alternatives to the proposed action.

"(b) The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vigorously and continuously promote—

"(1) increases in the proportion of loans supporting environmentally beneficial policies, projects, and project components;

"(2) the establishment of environmental programs in appropriate policy-based loans for the purpose of improving natural resource management, environmental quality, and protection of biological diversity;

"(3) increases in the proportion of staff with professional training and experience in ecology and related areas and in the areas of anthropological and sociological impact analysis to ensure systematic appraisal and monitoring of environmental and sociocultural impacts of projects and policies;

"(4) active and systematic encouragement of participation by borrowing countries nongovernmental environmental, community and indigenous peoples' organizations at all stages of preparations for country lending strategies, policy based loans, and loans that may have adverse environmental or sociocultural impacts; and

"(5) full availability to concerned or affected nongovernmental and community organization, early in the preparation phase and at all subsequent stages of planning of full documentary information concerning details

of design and potential environmental and sociocultural impacts of proposed loans.

"SEC. 1307. Not later than January 15 of each year beginning after the date of the enactment of this title, the Secretary of the Treasury, in consultation with the Secretary of State and the Administrator of the Agency for the International Development, shall submit an annual report on the progress being made to implement the objectives of this title to the Committee on Appropriations and the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Committee on Appropriations and the Committee on Foreign Relations of the Senate.

"TITLE XIV—AGRICULTURAL AND COMMODITY PRODUCTION

"SEC. 1401. The Congress hereby finds the following:

"(1) The financing of certain programs and projects by multilateral development banks has been of great concern insofar as the programs and projects have been detrimental to the interests of American farmers and the agribusiness sector.

"(2) An increase in rural income in developing countries will generally result in an increase in exports of United States agricultural and food products.

"SEC. 1402. The Secretary of the Treasury, after consultations with the Secretary of Agriculture and the Secre-

Working for the Nature of Tomorrow.
NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

STATEMENT OF BARBARA J. BRAMBLE

DIRECTOR OF INTERNATIONAL PROGRAMS

NATIONAL WILDLIFE FEDERATION

BEFORE THE

SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

REGARDING U.S. INTERNATIONAL ACTIVITIES AND

COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

JUNE 16 1988

Introduction

I appreciate the opportunity to testify this morning on behalf of the National Wildlife Federation concerning an initiative to require preparation of environmental analyses of projects financed by the multilateral development banks.

The Federation is the nation's largest private conservation organization with over 5 million members and supporters, dedicated to the wise use and management of natural resources and protection of the global environment.

The Federation has been a leader in the campaign to reform the environmental policies and projects of the multilateral development banks (MDBs) since 1983. We have worked closely with the Environmental Defense Fund, the Sierra Club, Environmental Policy Institute, and others in this effort, and endorse the testimony of Bruce Rich and Larry Williams this morning, describing the MDBs' environmental problems that necessitated the campaign, and some of the progress to date.

In addition, I served as legal counsel at the Council on Environmental Quality from 1979 to 1981 and worked with the Department of the Treasury in developing agency procedures to comply with the National Environmental Policy Act. I also represented the Environment Liaison Center, a worldwide network of enviornmental non-governmental organization (NGOs) headquartered in Nairobi, Kenya, in the deliberations on international guidelines for the

preparation of environmental impact analyses (EIA). These negotiations, sponsored by the United Nations Environment Programme (UNEP), have resulted in a set of guidelines recently adopted by the Governing Council of UNEP.

With this background in mind, I will try in my remarks today to put the Subcommittee's April 25, 1988 NEPA amendment proposal into context and recommend some alternative ways to accomplish the same objective.

The Federation applauds the proposal's goal of assuring that MDB projects receive thorough examination for environmental and social impacts, that alternatives be appropriately considered, and that the local people consulted, in the process of project design, implementation and evaluation. In fact, the multilateral development bank reform campaign has been designed specifically to accomplish this goal (See legislation attached). We appreciate the interest and support of the Subcommittee in this vital work. As has been amply documented in almost two dozen hearings since 1983, the projects financed by the MDBs have not been systematically reviewed for environmental and social impacts. Many have failed to deliver the economic benefits promised, and at the same time have caused unacceptable environmental destruction, substantial increases in human disease, and further impoverishment of already poor peasant communities and tribal minorities. (See Financing Ecological Disasters.)

It is entirely appropriate for the United States, through Congress and the Executive Branch, to exercise vigilance, seeking to ensure that funds it donates to the MDBs for assisting developing countries, do not instead endanger human life, reduce prosperity and destroy productive natural resources. Sound natural resource management is essential for sustainable development; and increased use of environmental impact assessments may lead to better resource management decisions.

Although the goal of making effective environmental impact analysis a regular part of MDB project approval clearly is shared by all of us here, it is not quite so easy to figure out how to achieve it. In fact, in 1983, the Environmental Policy Institute, National Wildlife Federation, and Natural Resources Defense Council where Bruce Rich worked at that time, prepared some draft language along the lines of the currently proposed amendment, which was considered by a Subcommittee of the House Banking Committee. At that time, even the threat of introducing such an amendment had the desired effect: hearings on the environmental and social impacts of MDB projects were scheduled immediately (June, 1983); the process leading to the escalation of Congressional and Treasury Department attention to these issues, and subsequent changes within the MDBs, was suddenly underway.

But we did not press for the originally proposed legislation, partly because of the very real problems posed by imposing NEPA or NEPA-type requirements on international activities.[1] We concentrated instead on the elements that are prerequisites to adequate EIA, such as increased staff expertise at the MDBs, and a requirement to consult local people and local environmental and health agencies.

One could argue that recently the Congress already has acted on the issue under discussion today, at least as far as its jurisdiction allows: in the 1987 authorizing legislation governing United States participation in the MDBs, the Congress required the Agency for International Development (AID) to "ensure" that agencies are instructed to analyze environmental impacts of MDB projects, well in advance of loan approval. (See Section 1303 of H.R. 3750, enacted as part of the Fiscal Year 1988 Continuing Resolution.)

This legislation is an important step. But it does not impose the specific requirements of NEPA, nor does it prohibit the United States from voting to approve projects that lack adequate environmental review. It is appropriate, therefore to revisit the original 1983 proposal, and analyze the current proposed NEPA amendment, to see if they are still needed and if the implementation problems earlier perceived can be overcome.

One of the most interesting things about the present proposal is that, because of its international context, it affects many different actors, most of whom the United States cannot control; it also aims at several objectives. For example, it is worthwhile to assure that the United States does not unwittingly vote for MDB projects causing serious demage to the natural resource base or which may jeopardize the lives of tribal minorities in the borrowing countries. And it is presumably our nation's right to take any measures we deem necessary to make sure we do not con-

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[1]There is no need here to go into the intricacies of the statutes which govern United States participation in the MDBs (See e.g. International Financial Institutions Act of 1977 (P.L. 95-118)). I am sure this Subcommittee is well aware of the fact that the MDBs are controlled by a Board of Governors, of which the United States is only one member, although it is the most powerful member in two of the banks. Suffice it to say that United States law can govern the actions of the Department of the Treasury, only by requiring it to promote certain policies or seek certain documents. Success in such endeavors can only be gained when the objectives of the United States are supported by other countries as well.

tribute to such harm, including voting "no" on all projects or even leaving the MDBs.

But in addition, we want to encourage borrowing countries to do their own EIAs, and ultimately to propose better projects. An intermediate objective is to make sure the MDBs give good advice to the borrowers on sustainable development strategies, and that they ensure adequate EIAs of the projects they finance.

As the proposed amendment recognizes, one tool to encourage attention to the environmental and social issues is to require the existence of an EIA (hopefully to be prepared by the borrower or relevant MDB) when the project comes up for a vote; then if it is not available, the United States cannot vote in favor of the project. Because of the importance of the U.S. vote (almost 20% at the World Bank; almost 35% at the Inter-American Development Bank), a U.S. legislative requirement to vote against projects which have no EIA cannot be ignored.

But note that the one institution we can control, the United State Department of the Treasury, is the least important actor in the long chain of responsibility to assure that projects in the borrowing countries are environmentally sustainable.

It is risky to announce goals that one does not have the power to carry out. Moreover, it is possible (though unlikely) that a United States demand for EIAs could be ignored completely, by the banks and the borrowers: one effect of the amendment might be to force the United States to reduce or eliminate its participation in the MDBs. Even though this result is unlikely to occur, no threat should be made or implied if we do not intend to carry it out.

Therefore, I am not sure we should concentrate so much on the logistical problems of whether the Department of the Treasury can or should prepare EISs, or whether the MDBs can or should provide the necessary documents to Treasury. The key question is: will the proposed amendment to NEPA make it more likely or less likely that borrowing countries will carry out their own EIAs and take the reports seriously in their own development planning? I do not think any of us knows the answer to that question; but I would feel better if we knew more about how to answer it before embarking on an amendment to NEPA. I would therefore propose that the Subcommittee ask Treasury and CEQ to sound out the views of government officials involved in EIA from a selection of borrowing countries.

Some Problems Raised by the Proposed Amendment:

The proposal to apply NEPA to the MDBs has much to recommend it. Obviously, environmental impact analyses should be done. They

would help the MDBs avert both large environmental disasters, and small avoidable losses of natural resources. Many countries around the world already have laws requiring environmental impact studies and routinely analyze new projects (Mexico and Brazil for example).

The United States has been a leader in developing environmental legislation and the techniques of impact analysis. Thus it is expected this country should take the lead in advancing international environmental agreements.

But there are at least two problems with the current proposal that need to be addressed. First, there is a great deal of confusion about how the amendment would be implemented. The draft language proposed by Tom Stoel of Natural Resource Defense Council is admirably clear and simple on most points. But it still does not clarify what entity is responsible for preparing the statements. Under NEPA as it applies within the United States, the agency preparing a "recommendation or report" is responsible for seeing that the EIS is prepared, although it may delegate the work or hire contractors. In the present proposal, however, no one I have talked to expects the Department of the Treasury actually to prepare or even oversee the necessary documents. We all seem to assume that the World Bank or other MDBs will do it, without having any ability actually to order it to be done. To make matters more confusing, I originally hoped the analysis provided to Treasury would be done by the borrowing country since, in fact, many project proposals submitted to the MDBs now contain an environmental impact analysis by the proponent country. But apparently the World Bank considers these to be confidential documents. (I do not know how this is treated by the other MDBs). Changing that set-up would be another good legislative objective; but it cannot be accomplished except by agreement of the World Bank Board. In any event, the amendment as currently proposed leaves it unclear who is going to do the required work, or how the law could be enforced, except by withdrawing the United States from MDB participation.

The second problem is more fundamental. NEPA is a uniquely American statute. It works only because of the characteristics of the rest of our legal system. It is a procedural statute, which requires consideration of certain values and resources; but it does not demand or prohibit any specific action or decision. It works in a particularly American way, relying on public participation for enforcement. The requirement to prepare the EIS itself is not the crucial part of NEPA. More important are the requirements to look at alternatives and consider public comments. What makes it all work is the right of citizens to stop a project through litigation if the EIS is not adequate.

There are thousands of legal cases where projects have been delayed, altered or stopped because of NEPA. Obviously, I and my

organization think this has been beneficial because many projects have been improved, really bad ones have been scrapped, and the agencies have learned better planning methods over the years. But in the international context, this aspect of NEPA's effectiveness has been a liability. I have participated in many discussions, trying to persuade foreign government leaders of the value of NEPA, both when I was at CEQ and since. It has been difficult to overcome their fears of the legal delays and serious embarrassments that agencies here have suffered. They associate that phenomenon with NEPA, regardless of the fact that their own legal systems may not permit legal challenges to government projects.

During the UNEP EIA negotiations, a long slow process was required to convince governments, especially in developing countries, that EIA was useful to them, and could be adapted to their own special circumstances. Especially successful in convincing many officials was the argument that an EIA did not automatically mean the same thing as an EIS under NEPA.

Based on this history, I believe there is no way to amend NEPA so as to apply to United States votes in the MDBs without at the same time giving the impression to countries around the world that we are trying to apply NEPA to them. Logically, and legally, of course, both the Subcommittee and NRDC's proposed language are careful to clarify that only the Department of the Treasury and the United States vote are under the control of the statute. But since it is clear that Treasury cannot carry out the EIS mandate by itself, the use of the language of Section 102 of NEPA would likely be interpreted as an attempt to bind the MDBs or the borrowers without having any legal jurisdiction to do so. Although it is possible that developing countries have changed their minds on this issue recently, I am afraid that we would antagonize them just as they are getting used to the concept of EIA through the efforts of UNEP.

Given that NEPA has historically carried with it such a load of fear and misinterpretation abroad, especially about litigation, I cannot help but feel that trying to apply NEPA itself might set back the cause of universal environmental impact assessment.

Alternative Recommendations

There might be several ways of accomplishing the same objective without the same magnitude of risk of unintended negative consequences.

1. UNEP EIA Guidelines

As mentioned above, UNEP has sponsored international negotiations for several years, which have recently produced a set of

guidelines for EIA (See Goals and Principles of Environmental Impact Assessment, adopted by the Governing Council of UNEP, 17 June 1987, Decision 14/25). The guidelines are fairly vague and full of platitudes. Significantly, however, they recommend thorough consideration of the relevant environmental factors, examination of alternatives and a meaningful opportunity for public comment. The most important point is that they have beer adopted by the member governments of UNEP, with the participation and support of many developing countries.

This means we can accomplish the goal of the proposed NEPA amendment without even mentioning NEPA. Rather than attempt to impose specific U.S. law, the United States legitimately can refuse to vote for any MDB loan for a project which does not have an adequate EIA, prepared under the internationally accepted "Goals and Principles of Environmental Impact Assessment." Since the UNEP guidelines recommend that "government agencies, members of the public, experts in relevant disciplines and interested groups should be allowed appropriate opportunity to comment on the EIA" (Principle 7), the Department of the Treasury easily could ask for the EIA directly from the borrowing country, well before its decision on an MDB loan.

Most significant of all is that using the international guidelines, not NEPA, as the standard, could enhance the likelihood that other donor governments would join forces with the United States in establishing similar requirements.

We have seen remarkable cooperation among the members of the World Bank's board in the last year, pushing jointly for the environmental reforms. Part of the reason for this is that the reform campaign has embraced citizen groups from around the world, including borrowing countries. This led to the growing sense that it is an internationally accepted imperative, not just a United States crusade. I recommend that rather than acting unilaterally in pressing for the next steps, the United States again enlist the forces of international concensus by seeking agreement among major donors on an EIA requirement.

In this regard, the experience and expertise of the Council on Environmental Quality (CEQ) could be helpful in determining an appropriate legislative vehicle and functional procedures. The Environmental Quality Improvement Act, 42 U.S.C. 4371-4374 (1970) may prove to be more useful here than NEPA. The Congress could instruct the Department of the Treasury in consultation with CEQ, to negotiate among the donor governments an acceptable formula for requiring preparation of EIAs prior to MDB votes. A statutory deadline for these negotiations, after which the Congress would again consider unilateral action, might be appropriate.

2. World Bank Review

The United States Congress has had a major effect on the environmental performance of the MDBs already, even though the legislative vehicle has been the indirect one of requiring Treasury to promote certain policies. Many significant reforms are underway at the MDBs. At the World Bank improved policies, changes in organization, increased staff and innovative studies have been announced. Whether or not these changes result in improved projects, or more systematic preparation of environmental impact assessments, it is too early to tell.

I understand the World Bank intends to undertake an examination, beginning in July (which is the end of the first year of the reorganization) of the results of the changes so far. If this review is in fact going to be done, and if it includes specific attention to the question of whether EIAs are routinely prepared where needed, the results of the review would be valuable to the deliberations of this Subcommittee. I recommend that the Subcommittee, working with CEQ and the Department of the Treasury, ask the World Bank first-year environmental review examine the questions of current EIA practice and whether improvements are needed. Similar questions might be asked of the Inter-American, African, and Asian Development Banks. With such up-to-date information, the Subcommittee can tailor its legislative proposal specifically to the EIA problems of the World Bank and the regional MDBs.

3. NEPA for United States Agencies Working Abroad

In the 1970s, after several lower court cases raised the issue of whether NEPA applied to actions of United States agencies abroad (See testimony of Larry Williams, Sierra Club, pp. 1-3) a compromise was reached which avoided a final Supreme Court decision on the question. An Executive Order was issued (E.O. 12114, 1979), requiring agencies to prepare environmental assessments for certain categories of actions abroad, especially those affecting the "global commons", and those with spillover effects on third countries, outside the specific project area of the United States action. Agencies such as the U.S. Army Corps of Engineers, the Bureau of Reclamation, and the Department of Transportation have advised on, helped to plan, or even helped to build projects in other countries. Because of the many loopholes in the Executive Order, it has never been entirely clear how NEPA applies to such actions.

The reasons given by the Executive Branch in the 1970s for not applying NEPA directly to such actions stem from perceived hostility by foreign governments to the idea of United States agencies attempting to study environmental impacts of projects within their territory. This logic may have been faulty at the

time: some countries might have welcomed free EIAs prepared by the United States. But if U.S. preparation of an EIS for projects in which the United States is a direct actor is still seen as a problem, I think the imposition of NEPA would be even more of an interference in the case of MDB projects, where the role of the United States is indirect.

Times may have changed, however, especially since the adoption of the UNEP Guidelines. Countries may in fact be less worried about environmental impact statements than I fear. Thus it may be time to reexamine the whole question of the application of NEPA abroad. One thing is clear: it is more appropriate to apply NEPA to United States direct actions abroad than to apply it to MDB votes.

I therefore recommend that the Subcommittee first examine the possibility of clarifying that NEPA applies to all actions of United States agencies whether at home or abroad. This should take precedence over the effort to apply NEPA to decisions of multilateral institutions.

ENVIRONMENTAL POLICY INSTITUTE

June 16, 1988

STATEMENT OF JAMES N. BARNES, SENIOR ATTORNEY, AND DR. BRENT BLACKWELDER, VICE PRESIDENT OF THE ENVIRONENTAL POLICY INSTITUTE, BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, CONCERNING INTERNATIONAL APPLICATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

I. Introduction

Mr. Chairman, I appreciate the opportunity to submit this statement for the record. I am Jim Barnes, Senior Attorney at the Environmental Policy Institute (EPI). EPI is one of this nation's leading environmental organizations, and has been working for a number of years to reform the lending practices of the multilateral development banks (MDBs). These include the World Bank, Inter-American Development Bank, Asian Development Bank and African Development Bank.

The projects financed by the MDBs often have enormous adverse effects on the environment of the countries they are supposed to be benefitting, as well as on indigenous and local peoples. Typically, the locally affected people and knowledgeable non-governmental organizations (NGOs) have little or no role in planning MDB projects. Often they are the last to know about an investment which may cause them to lose their land and livelihood. At the same time, information in the hands of those who stand to be directly affected, which may have led decision makers at the MDBs and in donor governments to reach a different decision, is unavailable to them.

EPI submits that some sort of formalized environmental impact assessment process should be carried out by the MDBs, which includes consultation with those who will be affected by the project or program and with NGOs. This would be a significant step forward in achieving implementation of earlier Congressional initiatives regarding the environmental performance of the MDBs. During the past three years Congress has enacted a series of important legislative directives designed to refocus the lending priorities of the MDBs toward sustainable development projects. Those directives have had a catalytic effect on both the MDBs and on other member governments.

In addition, EPI urges that NEPA procedures be firmly applied to overseas activities of U.S. agencies engaged in planning, evaluating and carrying out projects that could have serious environmental impacts.

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This testimony answers certain questions about the pending proposal for an environmental assessment requirement for the multilateral development banks, and also describes why NEPA should be applied to some activities of certain U.S. agencies working overseas.

II. Questions Regarding An Environmental Assessment Requirement for MDBs

Question 1: Would an environmental impact assessment process applied to the MDBs be too burdensome for the Treasury Department?

The objective of the legislation, in EPI's view, is not to have the Treasury Department staff prepare environmental assessment documents, but rather for the MDBs themselves to prepare the assessments as part of a rational, environmentally sensitive process which they long ago should have adopted.

The Treasury Department and other U.S. agencies with relevant expertise would have the implicit obligation of working multilaterally, with other donors to the MDBs, to convince the MDBs that such a process is required and to develop a plan of implementation. Congress might want to make that process more explicit.

Once a formal environmental assessment procedure is instituted by the MDBs, the Treasury Department would receive such a document in a timely fashion. Thomas B. Stoel of the Natural Resources Defense Council testified before the Committee on May 10, 1988, and proposed that assessments be available at least 60 days prior to a vote on a particular project, but that does not seem sufficient if there is to be study and consultation with the public and with other voting members of the MDB in question. We suggest that assessments be available both to the Treasury representative and to the public at least 120 days prior to a vote on a project.

We agree with Mr. Stoel's analysis of the benefits of such a procedure, both for the U.S. and for other MDB board members. Only the U.S. representatives to the World Bank and Inter-American Development Bank presently have the capability of making a reasonably informed decision about a project, thanks to the initiatives mandated by Congress. Other members often learn about the details of proposed loans only two weeks prior to a vote. This may be one reason why the U.S. has sometimes found itself voting against a project or abstaining while other members consider business as usual.

Question 2: Will the multilateral development banks respond to a United States directive or will this simply be an empty gesture, possibly precluding the U.S. from participation in lending decisions where there is no impact statement?

While it is true that action on the proposed U.S. directive on environmental assessments will depend on support from other executive directors, there is reason to believe that the growing environmental concern throughout the world will manifest itself in support by other executive directors as well as by many people on the staffs of the MDBs. Should other countries and the MDBs fail to support this type of environmental assessment process, then there is reason to question the sincerity of the MDBs' stated commitment to ensuring that their loans and other activities are environmentally sound.

It should also be noted that both the United Nations Environment Program (UNEP) and OECD have agreed on guidelines for applying environmental impact assessment to the aid and development process. The U.S. has played a major role in developing those guidelines, which now must be implemented. The proposed legislation is a step in the right direction in ensuring that the international guidelines are given effect in the major institutions carrying on development activities.

As drafted by Mr. Stoel, the amendment to NEPA would become fully effective in two years, which provides ample time for the MDBs to respond to the initiative and to adopt an EIA process. If Congress would like to consider other levers, the pending request for a major capital increase for the World Bank presents a good opportunity. Congress could make the capital increase contingent on implementation of a number of reforms by the World Bank, including the creation of an EIA procedure.

Question 3: How would an environmental assessment requirement for the MDBs be implemented?

An environmental assessment requirement would not place an exceptional burden on the multilateral development banks, which assert that they already examine these impacts in their lending. The requirement would simply make the banks pull together in one basic document all the essential information required in a U.S. NEPA statement.

The most important requirements would be (1) a description of the possible environmental and socio-cultural impacts of the proposed project, (2) a review of alternatives (and their relative environmental impacts), (3) a discussion of how the irreversible and irretrievable impacts could be minimized by modifying the project or placing certain conditions on the activities in question. These assessments would be required only for those MDB projects that could have significant environmental

impacts.

The World Bank has established an Environment Department, which would develop internal procedures and regulations for carrying out EIAs. This would include a formalization of what appears now to be an informal process, and would undoubtedly strengthen the ability of the Environment Department to argue its case internally in the World Bank. There would probably need to be a modification of the Operations Manual to include a Statement (OMS) about EIAs.

The other MDBs presently have only small environmental offices. They need to be upgraded, as Congress has noted in last December's legislation (Section 1301 of Title XIII). The proposed initiative would help focus the needs of those small environmental offices for more staff and other resources, and could help formalize their role and legitimacy within the Asian Development Bank, the African Development Bank, and the Inter-American Development Bank.

Question 4: Would such a requirement create too much paperwork?

U.S. agencies objected to NEPA requirements in the early 1970's, but experience has shown that NEPA improves the decision making process. It forces federal agencies to consider alternatives and to look at long-range irreversible commitments of resources. The paperwork required is not unreasonable for achieving such important benefits.

There is no reason to believe that the types of benefits derived by American society as a result of NEPA would not be replicated as a result of similar procedures being used in the international lending arena. It must be kept in mind that many of the projects funded by the MDBs are even larger than most U.S. projects, with huge impacts on the enviroment and people's lives. The U.S. contributions to the MDB also is large, which means that taxpayers' money is being used to finance the MDB projects. The additional paperwork that will be required by an EIA process is a modest price to pay for accountability by the MDBs to those people directly affected by projects as well as to donors.

Question 5: Don't we have sufficient legislation already?

The Congress has passed excellent legislation calling for environmental reforms by the multilateral development banks. The proposed legislation would complement the earlier legislation, including Section 1306(a) of Title XIII of the Authorization bill passed December 22, 1987. That provision requires U.S. Executive Directors to the MDBs to promote an EIA process in those institutions. The proposed legislation would make clear that, after two years, U.S. representatives will not vote for any

project that has not been subjected to a rational environmental assessment process, thereby strengthening our government's commitment to this approach.

It is worth noting that Congress has required AID to carry out this kind of environmental assessment of its proposed aid projects for more than ten years (see 22 CFR Part 216 and 95 Stat. 1533 (Section 117(c) of the Foreign Assistance Act). AID has found the procedure not to be unduly burdensome. In addition, AID has been developing an Early Warning System for evaluating MDB projects about which environmental concerns have been raised, largely because the MDBs have not used an EIA procedure. The Early Warning System would also be complementary to a formal EIA procedure within the MDBs, and might eventually be phased out if the MDBs did a good job in preparing evaluations.

III. Additional Recommendation Regarding Overseas Activites of U.S. Agencies

Some federal agencies, such as the Army Corps of Engineers and the Bureau of Reclamation, carry on work around the world, some of which has significant environmental impacts and/or implications. If those same activites were carried on in the U.S., they would be subject to normal NEPA procedures, including participation by the interested public. These agencies do not interpret Section 117(c) of the Foreign Assistance Act as applying to their overseas activities.

The Environmental Policy Institute recommends that these international activities be brought under the scope of NEPA, making them clearly subject to an environmental assessment process which ensures sound decisions and accountability to the public.

One current example illustrates the need for such a requirement. China is comtemplating building the world's largest dam, the Three Gorges, on the Yangtze River. In 1980 the Army Corps of Engineers, the TVA, and the Bureau of Reclamation toured the area and recommended that China not proceed with this gigantic project. In subsequent years, however, the Bureau of Reclamation began actively to help plan for the construction of the project and is apparently urging the Chinese to go ahead with the project.

Despite the desire of non-governmental environmental organizations to ascertain what the Bureau of Reclamation is doing, we have been informed that information pertaining to the Bureau's work on the Three Gorges is classified. The Bureau refuses our request that it prepare an environmental impact statement. An environmental impact statement on such an immense undertaking is vitally important. At stake is the famous "Grand

Canyon" area of China. Over 330,000 people would be displace by the project. The entire hydrology of this great river system would be altered by the dam which would block the downstream flow of nutrients. Impacts would be felt all the way to the Shanghai estuary, whose productivity could be impaired. If there ever were an undertaking by a federal agency which requires a thorough environmental analysis, it is this project and the U.S. role in promoting it.

We urge Congress to cover this loophole either with an amendment to NEPA or the Foreign Assistance Act. It would also be useful for a special oversight hearing to be convened to review what sorts of similar activities are being carried on or planned by U.S. agencies, and to consider mechanisms of public accountability regarding those activities.

ENVIRONMENTAL DEFENSE FUND

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STATEMENT OF BRUCE M. RICH

SENIOR ATTORNEY, ENVIRONMENTAL DEFENSE FUND

BEFORE THE SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

CONCERNING THE PROPOSED APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT TO U.S. PARTICIPATION IN MULTILATERAL DEVELOPMENT BANKS

JUNE 16, 1988

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Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee today. I am Bruce M. Rich, Senior Attorney with the Environmental Defense Fund (EDF) and Director of EDF's International Project. The Environmental Defense Fund is a public interest advocacy and research organization with over 70,000 members nationwide. In its 20 year history EDF has initiated or joined many of the key legal actions that have tested and established the scope of the National Environmental Policy Act. EDF's International Project has been involved for several years in research and advocacy efforts to promote environmental reforms in the lending activities of the World Bank and three other multilateral development banks (MDBs).

In my statement this morning I will try to summarize the efforts the U.S. has made over the past several years to promote environmental reforms in the MDBs, review what environmental progress the the MDBs have made as well as the measures and reforms they still need to take, and in light of these needed reforms discuss the proposed application of NEPA to our participation in the MDBs.

I. U.S. Efforts to Promote Environmental Reforms in the MDBs

Since June, 1983 the Congress has held, at my count, 22 hearings on the environmental performance of the MDBs; ten of these were special oversight hearings called specifically to build, initially, a public record on the need for environmental reform in the multilateral banks, and, more recently, to monitor the progress of that reform. At least six different Subcommittees of the Congress have been involved in sponsoring these hearings, including all of the Subcommittees with responsibility for authorization of, and appropriations for U.S. participation in the MDBs.

As a result, a public record of thousands of pages has been established over the past five years on both the environmental deficiencies of the multilateral banks and on the ways in which the United States could effectively promote needed reforms within them.

A direct consequence of these hearings was the enactment of legislation in late 1985 which directed the Treasury Department to vigorously promote a number of fundamental environmental reforms within the MDBs, and to report regularly back to Congress on the progress of the banks in implementing these measures. This legislation, though it was technically part of the Foreign Operations Appropriations bill for FY 1986 (which was passed as part of a larger Continuing Resolution in December, 1985), was based on a longer series of environmental reform recommendations for the MDBs issued by the House Banking Subcommittee on International Development Institutions and Finance in December, 1984. The recommended environmental reforms contained in this legislation were strengthened and expanded in the Foreign Operations Appropriations bills enacted for FY 1987 and FY 1988, and were also incorporated into authorizing language passed late last year. (Section 537 of

the FY 1988 Foreign Operations Appropriations bill and Title XIII, Sections 1301--1307, of the Multilateral Investment Guarantee Agency Act, both enacted as part of House Joint Resolution 395, approved December 22, 1987, P.L. 100-202)

Since 1985, this legislation has directed the Treasury Department to promote in the MDBs four fundamental reforms through our Executive Directors on the Boards of those institutions: first, the MDBs were to greatly increase their professionally trained staff in the environmental sciences and in related social sciences such as anthropology and sociology; second, the banks were to be urged to change their operational procedures so that ministers of environment and public health would be regularly and systematically consulted in the identification, preparation and implementation of projects; third, the MDBs were to undertake operational reforms so that non-governmental organizations, local community groups, and organizations representing indigenous and tribal peoples would be systematically and regularly involved in borrowing countries in the planning and implementation of all projects that would effect communities and constituencies such groups represent; and fourth, the MDBs were to be urged to undertake a shift in lending priorities so that they would finance a much greater proportion of smaller scale, environmentally more benign and economically more efficient projects and programs.

Because of these hearings and legislation, the Treasury Department, and more recently the State Department and U.S.A.I.D., became actively involved in trying promote environmental reform in the MDBs. My colleague Larry Williams of the Sierra Club has described in his statement the role of U.S.A.I.D., for instance, in developing an "early warning system" to provide information to the Treasury Department from A.I.D. missions on upcoming MDB projects that may have serious environmental implications.

Clearly, however, environmental reform in the MDBs will be best served, and in the final analysis, will only take place if the MDBs themselves undertake the responsibility to environmentally assess their projects, rather than domestic agencies of donor governments such as the United States. The multilateral banks must also identify and finance many more alternative projects that by their nature further economic development without destroying the natural resource base on which all future development depends. EDF and several other other national environmental organizations represented at this hearing have identified the four fundamental reforms of the MDB environmental legislation referred to above as prerequisites and priorities for the the MDBs in achieving these goals.

II. Progress to Date of the MDBs in Achieving Environmental Reform

Despite the continued pressure of the United States, and, increasingly, of other donor nations, progress of the MDBs in implementing environmental reform has been for the most part not only slow, but inadequate. I will dwell mostly on the World Bank, since it is the most important by far of the MDBs and has also taken the lead among the multilateral banks in admitting that

with respect to the environment that "if the World Bank has been part of the problem in the past, it can and will be a strong force in finding solutions in the future." Little more than one year ago the President of the Bank, Barber Conable, publicly announced a number of environmental reforms the Bank would undertake: the creation of a new Environment Department with greatly increased staff, compared with the Bank's old environment unit; financing a number of environmentally beneficial activities, including doubling the Bank's forestry lending; and greater involvement with non-governmental organizations.

Regrettably, there is so far less than meets the eye to these reforms. The need for increased environmental staff was the most urgent reform, because although the World Bank has had for a number of years environmental guidelines and policies, lack of environmental review staff made the systematic implementation of these policies impossible. Formerly, the Bank with more than 6000 employees had an environmental unit with at most five or six staffers, only three of whom were involved even part time in attempting to review more than 300 new projects a year and hundreds of ongoing ones.

To address the problem of environmental review and assessment of projects, the Bank established environmental review units of approximately five professionals each for each of its four operations regions--Latin America, Africa, Asia, and Europe and the Middle East. We have discovered, however, that these environmental assessment units have not been given either sufficient budget nor the institutional authority to intervene in projects unless requested to do so by project officers and Bank country directors. These operations staff have little institutional incentive to involve the environmental assessment units, since this involvement can only risk slowing down the processing of projects and loans, which is what advances the careers of the staff, not the environmental quality of projects.

In addition, the Bank established a new, central environment department, with about 28 professional staff, which is mainly involved in research, and longer term planning and strategy. The work of the central environment department--which includes research such as revamping the Bank's cost/benefit analysis so it can quantify and incorporate some environmental concerns--could have a longer term impact on the whole nature of the Bank's lending, but so far it appears to have had little tangible effect.

The promise of a greater proportion of environmentally beneficial projects has also had little manifestation in the actual mix of projects the Bank has financed over the past year. There have been isolated instances that are encouraging--such as the identification of proposed national environmental policy loan for Brazil that may total over $100 million. The promise of doubling the Bank's forestry lending in coming years, however is seen by many environmental organizations in the Third World as a threat, since many Bank forestry projects in the past have had adverse environmental and social impacts. I have included for the record a recent article from the British journal New Scientist, which describes some of these problems. Finally, with respect to greater involvement of non-governmental organizations, particularly in developing countries, we have heard an escalation of rhetoric in this regard over the past year, but have seen little change in practice.

Again, there have been isolated examples of greater consultation, but recently--for example with respect to a number of World Bank energy projects in India--dismaying reluctance to meet with representatives of poor people directly, and adversely, affected by Bank projects.

The Inter-American Development Bank, while continuing to suffer from understaffing and other institutional weaknesses in the environmental area, has undertaken over the past year several actions in Brazil that must be praised as outstanding examples of how MDBs can play a positive a role in involving non-governmental organizations and local community groups to promote environmental concerns in projects that affect such groups. For example, in the past year the IDB has taken decisive action to bring its road construction project in the Northwest Brazilian state of Acre into compliance with environmental protection clauses in the loan. It has taken unprecedented steps to ensure the participation of Indian and rubber tapper communities most affected by the project, including securing an agreement of government agencies to allow Indian communities in the rainforest areas affected by the road to participate in surveys of their land requirements and to be legally empowered to decide on the form of reserve to be created for them. This process means that for the first time in any multilateral bank project, the communities most vulnerable to the negative effects of a project will have a real say in how the project proceeds, and in the measures intended to benefit them. With this action, the IDB has set a standard for active involvement of of non-governmental organizations and local community groups in all multilateral bank operations.

However, the IDB still has only two professionally trained ecologists (and one ecologist in the IDB's Brazil Field Office) in a staff of over 1800 to attempt to environmentally assess more than 80 new and hundreds of ongoing projects a year. Although representatives of the national environmental groups testifying at this hearing recently had an encouraging meeting with the IDB's new president, Enrique Iglesias, it is much too early to say whether he will be able to implement in the IDB his desire to give environmental matters a much higher priority. The Asian Development Bank is similarly lacking in environmentally trained staff--there are currently three professionals in its environmental unit. The ADB has extensive environmental guidelines but inadequate environmental staffing and information from non-governmental organizations in ADB borrowing countries indicate to us that systematic implementation of these guidelines is far from a priority. The African Development Bank, given its limited resources, has tried to be responsive to environmental concerns, but it is difficult to say whether the environmental quality of its projects has been any better.

The bottom line, and the only one that counts, is the overall environmental quality of the majority of the projects the MDBs are funding and planning. Unfortunately, what EDF and the other organizations represented here today are continuing to uncover is more and more evidence of poorly planned, tragically misguided projects which are destroying the natural resource base on which the rural poor in developing countries depend for their physical survival. In project after project we are discovering that the MDBs' institutional weaknesses and lack of commitment of priority and resources to

ecological matters is destroying the biological capital on which all future development in the Third World must draw. And it is especially the poorest of the poor, the most marginalized populations who are most cruelly affected. In a number of MDB projects gross ecological negligence is reducing rural populations from a subsistence economy to absolute destitution.

The one institution that so far has made more than a rhetorical commitment to instituting increased environmental assessment of projects--the World Bank--has set up the units that would review Bank projects in such a way so that they are hamstrung by lack of resources and institutional authority. Five years after the first hearings on the environmental performance of the MDBs in the Congress, the regional MDBs are still committing much more effort to rhetoric and to cosmetic changes rather than to really improving the environmental quality of what they finance. To what extent this situation is do to bad faith, and to what extent it is due to bureaucratic inertia and competence is a matter for debate.

III. Needed Measures to Accelerate the Pace of Environmental Reform in the MDBs

Clearly, the pace and degree of environmental reform in the MDBs has been inadequate. A first priority should be more vigorous implementation of the four major reforms set out in the legislation of the past three years. The regional MDBs need to greatly increase their environmental staff, and the World Bank needs to empower the expanded staff it has already hired, in particular the four regional environmental assessment units. Although the World Bank and IDB have made promising rhetorical commitments to greater involvement of local non-governmental organizations in their project planning and implementation, their actual practice continues to contradict their rhetoric. The lending priorities of the banks have hardly changed at all, and they continue to finance whole categories of projects which are both environmentally destructive and economically inefficient.

The U.S. Executive Directors need to continue, and strengthen their efforts to promote these environmental reforms in the the MDBs. But the most important need is for Executive Directors representing other nations, particularly Third World borrowing countries, to press for reform. Although the MDB environmental legislation has mandated that the Treasury and State Departments "conduct bilateral and multilateral discussions with other members of the MDBs to further strengthen the environmental performance of each bank" (Section 537 (g), House Joint Resolution 395, approved December 22, 1987) and "diplomatic and other initiatives" to the same end (Section 539 (c), of Public Law 99-591, 1987 Continuing Appropriations Act, approved October 30, 1986), over the past two years both Treasury and State have been relatively sluggish in undertaking such discussions and initiatives. The Congress could facilitate this by giving both the Treasury and State Departments stronger directives to undertake such international and diplomatic initiatives.

Much more disturbing is the fact that the managements of the MDBs are

often not supplying their Executive Boards with sufficient information on the environmental and social aspects of loans so that loans for projects can be evaluated on an informed basis. Although most World Bank project documents now contain a sentence or paragraph on the environmental consequences of proposed projects, the inclusion of such a sentence or paragraph is done as a formality and often conveys no information based on actual substantive investigation of potential environmental impacts. The Executive Directors of the MDBs receive the loan documents and project appraisal reports only two weeks prior to a vote, which, even if they had sufficient staff and resources to review them, is not sufficient for most member countries to make an informed decision. This would require sending the loan documents back to their respective countries for review and comment by agencies with technical expertise--logistically highly impractical if not impossible in a two week period.

To show the extent of the lack of environmental information in MDB loan decisions, I would like to submit for the record excerpts from the minutes of the Meeting of the World Bank Board of Executive Directors of June 19, 1986. At this meeting two Executive Directors of the World Bank, including the U.S. Executive Director, voted against approval of a $500 million dollar energy sector loan to Brazil on environmental grounds. Another Executive Director suggested that a decision on the loan be postponed, since further discussion and information was needed. I quote from paragraph 67 of the Board minutes for that date: "A number of speakers [Executive Directors] expressed concern about the potential environmental impacts and potential resettlement problems of the subprojects which would be financed by this loan. Some of them cited pressure on their Authorities to oppose the loan from environmental groups who appeared to have details of the subprojects, many of which were not discussed in the President's Report [loan document] (emphasis added). And paragraph 87: "Another speaker [Executive Director] asked that management provide information on the outcomes of the other projects [financed by the loan], as well as Itaparica. He also stressed that the documents presented to the Board did not point out all of the major issues over which the Board and various shareholder Governments would have difficulties with environmental groups. He asked that this be avoided in the future when this kind of project was presented to the Board."(emphasis added)

What we have here then is disturbing evidence that the World Bank Executive Directors themselves are concerned about the lack of information on the environmental and social impacts of projects that the Bank's management asks them to approve.

This underscores the urgent need for the MDBs to prepare environmental reviews or assessments on prospective projects and submit them well in advance to their Executive Boards so that member governments can make informed decisions on proposed loans.

There is a further need within the U.S. government itself to involve technically trained staff from EPA in the review of MDB project documents. Currently, there are two staffers at the Treasury Department who are attempting to evaluate MDB projects and policies for environmental and

socio-cultural impacts. They receive some assistance from U.S.A.I.D. through the reports of the "early warning system" through which AID missions attempt to identify MDB projects at an early stage that may have serious environmental implications. In many instances, however, the Treasury Department staffers are already overwhelmed by both the quantity of potential projects they must deal with and a lack of technical environmental expertise in some areas to evaluate projects. The active involvement and coordination of EPA staff, when needed, would be the single most important step that could now be taken to enhance the environmental review capacity of the U.S. in MDB loan decisions.

IV. Is Extending NEPA to U.S. Participation in the Public International Financial Institutions the Best Way to Further Environmental Reform in The MDBs?

This, of course, is the key question of this hearing. We would like to first of all thank Senator Syms for raising this issue, since it represents an important step forward in continuing efforts of national environmental groups such as EDF and of the Congress and Administration in ensuring that our participation in the MDBs promotes development that is truly sustainable. Certainly the goals that the NEPA process promotes are ones which we feel are indispensible for sound development planning in MDB projects--and which, as the forgoing discussion indicates, are a long way from being realized in the operations of the multilateral banks.

The U.S. NEPA process contains a number of elements which EDF and other national environmental groups think are absolutely necessary for the MDBs to incorporate in their development planning for every proposed project and loan: namely, the examination of alternatives, the evaluation of environmental impacts that cannot be avoided as well as those that can be mitigated, the analysis of short-term versus use long term sustainability, the identification of irreversible impacts or changes in resource use or environmental equilibrium, and very importantly, the circulation in advance of information on environmental aspects of proposed projects so that the local public or affected populations are both informed about, and involved in project planning.

However, the MDBs are unique, multilateral institutions and extending NEPA to our participation in them may not be the most effective or desirable means to promote NEPA's goals in the planning and implementation of projects they finance in developing countries. Proponents of the amendment argue that it is tailored to the specific, and unique characteristics of the MDBs in that the Treasury Department would be required to promote the preparation of environmental impact assessments within the banks by 1991, or else the U.S. would not be able to vote on a large number of proposed projects and loans that might entail significant environmental impacts.

There are two threshold questions about the proposed amendment's effectiveness that should be considered in much more detail. First, it is not at all clear whether the threat of U.S. abstention two and one half years

hence on a large number of loans is the most effective means of promoting systematic environmental assessment within the MDBs. The U.S. alone cannot change the policies and procedures of the multilateral banks; as the largest or second largest donor in them it can promote change, if it closely develops and coordinates its efforts with other major donor and borrower countries. As it is, there is considerable legislation which requires the U.S. to abstain or vote against MDB certain MDB loans--for example,those promoting the production of certain mineral and agricultural commodities in developing nations that would compete with troubled U.S. industries. These provisions have been of dubious effectiveness in influencing MDB lending procedures or policies, mainly because other nations both developed and underdeveloped perceive that they reflect purely domestic concerns and interests. Second, a legislative vehicle already exists to promote environmental assessment of MDB projects by the U.S. government. Late last year, MDB authorizing legislation was passed which contains provisions that direct the Treasury Department, in coordination with U.S.A.I.D. and the Department of State to prepare environment reviews of proposed MDB loans--Section 1303 of Title XIII of the Multilateral Investment Guarantee Agency (MIGA) Act passed last December.

There are number of other issues that also need to be addressed in considering the best way of promoting environmental improvements in MDB projects and the appropriateness of NEPA as a vehicle for this:

--MDB projects are joint undertakings between borrowing country governments and the banks; and the goal of the proposed amendment is to promote environmental assessment of, and improved environmental quality in MDB projects in the developing countries. But both developing and other donor countries tend to react negatively to perceived attempts to promote or impose U.S. domestic legal criteria and standards in international organizations and in other countries. Rather than requiring Treasury to promote NEPA standards in the MDBs, environmental assessment might best be promoted in these institutions through promotion of similar environmental assessment standards and criteria that have been prepared by international agencies such as the United Nations Environment Programme.

--Improved environmental quality, including adequate environmental assessment, in MDB financed projects will require ultimately not so much an application of U.S. domestic environmental legislation to our loan decisions in the MDBs, but rather efforts--and legislation to promote such efforts--of the U.S. to encourage, in coordination with other nations--increased MDB support for environmental and natural resource agencies in the Third World, as well for a shift in lending priorities by the MDBs so that they finance a much greater proportion of environmentally beneficial projects.

--The U.S. government needs increased staff expertise in its environmental review of proposed MDB projects; the most pressing need is for greater technical and logistical support to the Treasury Department, which could be provided by EPA.

I have tried to set out in this statement some of the major issues that need to be considered in efforts to promote environmental assessment of MDB

projects, and improved environmental quality of multilateral bank financed projects in general. This hearing, and the proposed extension of NEPA to U.S. participation in the MDBs is an extremely useful step in continuing efforts to promote environmental reform in these institutions. I think we can conclude that there is no question of the urgent need to vigorously promote the goals of NEPA in MDB loans and projects--goals which include not only technical issues of environmental impact analysis but also of public review of, and participation in planning of proposed projects, particularly in the developing countries themselves.

EDF believes, however, that there are major questions that need to be analyzed in more detail to determine whether extending NEPA to our participation in the MDBs is the best, most effective and most appropriate means for ensuring environmental assessment in MDB financed projects in developing countries.

To promote the goals of NEPA in the MDBs, the U.S. must coordinate its efforts with other major MDB member nations. In addition, there already exists a legislative vehicle in the normal MDB authorizing language which calls upon the Treasury in coordination with other relevant agencies to conduct environmental reviews. It would seem more appropriate to strengthen and refine the existing environmental assessment language that is already law, rather than extending and modifying NEPA, which is tailored more for unilateral actions of U.S. government agencies. To conclude, the issue is not the need and desirability of seeing NEPA's goals implemented in the activities of the MDBs; the issue is what is the most effective and viable legislative vehicle, given the unique nature of these institutions and our participation in them.

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STATEMENT OF THOMAS B. STOEL, JR.

DIRECTOR, NRDC INTERNATIONAL PROGRAM

BEFORE THE SENATE COMMITTEE ON

ENVIRONMENT AND PUBLIC WORKS

June 16, 1988

I. Introduction

Mr. Chairman, I appreciate the opportunity to submit this statement for the record of this important hearing. I am Thomas B. Stoel, Jr., Director of the International Program of the Natural Resources Defense Council (NRDC). NRDC is one of the Nation's leading environmental organizations, with more than 75,000 members located in every state and many foreign countries.

NRDC has been working for more than five years to improve the environmental performance of the multilateral development banks (MDBs). We are convinced that the environmental performance of the MDBs would be greatly enhanced if they systematically prepared environmental assessments (EIAs) similar to those required of all federal agencies under the National Environmental Policy Act (NEPA). The lack of this kind of systematic procedure is one of the main reasons why the environmental performance of the MDBs has been so bad.

Requiring that EIAs be prepared would ensure that the staffs of the MDBs take environmental impacts into account in designing projects. In addition, if each EIA were required to be available to the U.S. Government and U.S. public a reasonable time before votes on proposed MDB actions, it would enable the U.S. Government to engage in an orderly, informed decisionmaking process.

Equally important, this requirement would enable all other members of the MDBs' boards to take account of environmental impacts when they vote on proposed MDB loans. Currently, only the U.S. board members have even a rudimentary capability to do this, and then only in the case of the Washington-based MDBs (the World Bank and Inter-American Development Bank). Other members of the MDBs' boards often learn about proposals for large,

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complex MDB loans only two weeks before they have to vote. As a consequence, the United States often has abstained alone on environmental grounds, with the result that environmentally harmful loans have been made over our objection.

It would be especially helpful if the MDBs were required to consider alternatives to the projects they propose to support, as is required under NEPA. This would mean, for example, that the MDBs would have to consider smaller-scale alternatives to environmentally harmful "mega-projects" and energy conservation as an alternative to energy production facilities.

II. AID's Experience

Many of the problems relevant to environmental impact assessment by the MDBs have been addressed successfully by the U.S. Agency for International Development (AID). Late in 1975, AID settled a NEPA lawsuit brought by NRDC and others by agreeing to adopt environmental regulations. Those regulations, now found at 22 CFR Part 216, require that an Environmental Impact Assessment (EIA) be prepared concerning every proposed action which might cause significant harm to the environment.

These EIAs must consider both the environmental consequences of the proposed action and alternatives to it. EIAs are available to the public under the Freedom of Information Act, but drafts are not circulated for comment outside the Agency (AID also is required to prepare full-scale environmental impact statements in a few circumstances, and these must be circulated more widely).

In 1981 (see 95 Stat. 1533), the Congress codified the AID procedure in what is now section 117(c) of the Foreign Assistance Act, which provides in relevant part:

"Subject to such procedures as the President considers appropriate, the President shall require all agencies and officials responsible for programs or projects under [Chapter I of the Act] --

. . .

(B) to prepare and take fully into account an environmental assessment of any proposed program or project under this chapter significantly affecting the environment of any foreign country. . . ."

Like the MDBs, AID is a development aid agency -- the largest bilateral aid agency. AID's EIA procedures have worked very well. They provide a good model for the MDBs.

III. The Possibility of Requiring Treasury To Prepare Full-Scale EISs Under NEPA

Section 102(2)(C) of NEPA requires every federal agency to prepare an environmental impact statement on every recommendation or report on a proposal for a major federal action "significantly affecting the quality of the human environment." The EIS must assess both environmental impacts and alternatives. It must accompany the proposal through the agency decisionmaking process. Prior to any decision, the EIS must be circulated to relevant federal, state, and local governmental agencies for comment, and must be made available to the public pursuant to the Freedom of Information Act.

One obvious possibility is simply to apply Section 102(2)(C) to the Treasury Department, by making it clear that recommended votes on proposed MDB actions (mainly proposed loans) are within the ambit of NEPA.

This approach has the advantage of simplicity, but is not ideal. Some of the circulation and comment procedures for EISs under NEPA seem ill-suited to the way the MDBs operate. And a phase-in period seems a necessity.

IV. Suggested NEPA Amendment

NRDC believes that the best approach would be to amend section 102 of NEPA to add a new paragraph (D) as follows:

> "(D) Include in every recommendation for a U.S. vote on a proposed action by a multilateral development bank of which the United States is a voting member that would affect significantly the quality of the human environment a detailed environmental impact assessment meeting the same requirements as to content as are required for environmental impact statements under paragraph (C). That assessment must be available to the U.S. official responsible for the recommendation not less than 120 days before the date of the vote in question; shall accompany the recommendation through the subsequent agency review process; and shall be made available to the public as soon as possible pursuant to section 552 of title 5, United States Code. This requirement shall apply only to votes taken more than two years after the enactment of this statute. After that date, the United States shall not vote in favor of any such action unless this requirement is met, unless the President finds that such a vote is essential to important economic or security interests of the United States. The President shall report to the Congress the

reasons for any such finding within 30 days of the vote in question."

V. Suggested Report Language

NRDC recommends the following report language:

"Actions taken by multilateral development banks (MDBs) of which the United States is a voting member -- such as loans to support tropical deforestation and construction of large dams -- have enormous adverse environmental impacts. Often, such actions have been approved without understanding these impacts, resulting in unnecessary harm to the environment. The Committee finds that the lack of systematic procedures for assessing environmental impacts is a major reason why the environmental performance of the MDBs has been so poor.

This amendment adds a new paragraph to section 102(2), the purpose of which is to induce the MDBs of which the United States is a voting member to prepare environmental impact assessments similar to those required of all federal agencies under current section 102(2)(C). The Committee believes that this will would greatly improve the environmental performance of the MDBs.

Preparation of an EIA will ensure that the MDBs take environmental impacts into account in designing projects. It will enable the U.S. Government to engage in an orderly, informed decisionmaking process. It also will enable the other members of the MDBs' boards to take account of those impacts when they vote. Currently, only the U.S. board members have even a rudimentary capability to do this, and usually only with respect to the Washington-based MDBs (the World Bank and Inter-American Development Bank). As a consequence, the United States often has abstained alone on environmental grounds, with the result that environmentally harmful loans have been made over our objection.

The amendment will require the MDBs to consider alternatives to the projects they propose to support, as U.S. agencies are required to do under NEPA. This means, for example, that the MDBs will have to consider smaller-scale alternatives to huge, environmentally harmful "mega-projects" and energy conservation as an alternative to energy production facilities.

The Committee does not intend that the responsible Federal agency (currently the Department of the Treasury) shall prepare the environmental impact assessment required under this amendment. This should be done by the multilateral bank in question. The Committee expects the Treasury Department to work with the MDBs to develop feasible procedures to be followed by the MDBs in preparing EIAs which satisfy the content requirements of section 102(2)(C) (including the requirement that alternatives to the proposed action be considered). In doing so, the Committee recommends that the Treasury and the MDBs draw on the experience of the U.S. Agency for International Development, which has developed highly successful EIA procedures, currently found at 22 CFR Part 216.

The Committee recognizes that this requirement cannot be implemented immediately, since many MDB projects are now in late stages of development. Accordingly, the requirement applies only to votes occurring more than two years after the enactment of this amendment. However, the Committee urges the Treasury to work with the MDBs to implement the requirement as soon as possible.

The sanction imposed by the amendment is that the United States shall not vote in favor of a proposed action unless the EIA requirement has been met (or unless the President finds that important economic or security interests require such a vote). The Treasury (or other responsible agency) shall decide whether the requirement has been met. However, the Committee expects that the United States will have to abstain or vote negatively in few if any cases. Rather, the Committee believes that the MDBs will adopt EIA procedures which satisfy the requirements of the amendment.

The amendment allows the United States to vote in favor of a proposed action by an MDB even though the EIA requirement is not met, if the President finds that such a vote is essential to important economic or security interests of the United States. The Committee expects this to be a rare occurrence.

The amendment requires that the EIA be made available to the responsible U.S. official not less than 120 days before the date of the vote in questio.., and to the U.S. public as soon as possible after

receipt by the U.S. Government. Requiring that an EIA be prepared and available to the U.S. Government and U.S. public a reasonable time before votes on proposed MDB actions will enable the U.S. Government to engage in an informed decisionmaking process, and to take into account the views of interested members of the public. Equally important, as noted above, this requirement will enable the other members of the MDBs' boards to take account of environmental impacts when they vote.

The amendment provides that the EIA must be made available to the public, pursuant to the Freedom of Information Act, as soon as possible after it is received by any agency or official of the U.S. Government. The Committee believes it extremely important that the public be informed as soon as possible, so members of the public may make known their views concerning the way the United States should vote. The intent of the amendment is that the United States shall not withhold any such EIA merely because it was produced by an international organization (the MDB in question) or on account of any objection by the country or countries which are the subjects of the proposed MDB actions (normally a borrower country seeking a loan), unless the President invokes the national security exception provided in the amendment and makes his reasons known to the Congress.

The Committee considered applying this requirement to other international financial institutions of which the United States is a voting member, such as the International Monetary Fund. However, the Committee felt that it had too little information to do so at this time."

VI. Conclusion

Mr. Chairman, that concludes my statement. I look forward to working with the Committee on this important issue.

CRS REPORT FOR CONGRESS

ENVIRONMENTAL EFFECTS OF WORLD BANK PROJECTS: A SUMMARY OF RECENT CONCERNS AND ACTIONS

by
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July 17, 1987

ENVIRONMENTAL EFFECTS OF WORLD BANK PROJECTS: A SUMMARY OF RECENT CONCERNS AND ACTIONS

Over the past four years the World Bank has been under close scrutiny by environmental interest groups who have brought to the Congress their evidence of negative environmental impacts of World Bank projects. In response to these allegations, some 18 hearings on these issues have been held by various committees and subcommittees of the Congress--including both authorizing and appropriations committees for the World Bank.

The major concerns were that the World Bank and other multilateral development banks (MDBs) funded large projects, many of which had adverse, often unforeseen, environmental impacts. In some cases, critics argued that the major purposes of the projects were undermined by such impacts. Examples included large dam projects that failed to include watershed protections and led to erosion and siltation; irrigation projects that led to salinization of the soil due to inadequate design for drainage; and resettlement projects that led to human hardship when lands unsuitable for farming were settled for agricultural production. It was argued that the World Bank's small environmental staff, with some four to six professionals and only one ecologist, had been unable to monitor the large volume of projects undertaken by the Bank. In addition, project planning and design methods, it was argued, did not provide for inclusion of environmental considerations, and staff throughout the Bank did not have training in natural resources and environmental areas.

Although the World Bank established its Environment Office early in the 1970s, and had numerous environmental guidelines in various sectors available, the drawbacks mentioned above--small environmental staff and lack of environmental expertise among analytical and design staff--prevented their widespread usage.

As a result of the hearings process and an examination of the problems brought up by the environmental groups, the U.S. Treasury Department determined that there were environmental problems that hindered the success of World Bank projects, and U.S. Directors of the World Bank were given instructions to examine environmental impacts before voting in favor of World Bank projects. In addition, language in several successive appropriations acts that provided funding for the World Bank gave explicit direction to Treasury to examine environmental impacts of projects.

99th Congress Legislation

In 1986, the continuing resolution passed in October (P.L. 99-591) contained in section 539 additional specific instructions to the Secretary of the Treasury, the Secretary of State and the Administrator of the U.S. Agency for International Development (AID). The Treasury Secretary was directed to promote a commitment by the multilateral lending institutions to add professionally trained staff with experience in ecology and related areas to: undertake environmental review of projects; develop and implement management plans to ensure systematic and thorough environment review of projects

affecting natural resources; and create career and other institutional incentives for all bank staff to incorporate environmental and natural resources concerns into project planning and country programming activities.

Specific activities by the banks are to be sought by U.S. Executive Directors of the MDBs: creation of a line unit to carry out environmental reviews of projects; appointment of an environmental adviser to MDB presidents; and programs to monitor ongoing projects to ensure enforcement of environmental conditions. Changes to be promoted by U.S. Directors included: active involvement of environmental and health ministers in preparation of environmentally sensitive projects; participation of non-governmental indigenous peoples and conservation organizations in all stages of project planning; and informing local communities and appropriate non-governmental organizations of all project planning.

Additional directives to Treasury include: promoting a commitment by MDBs to rehabilitation and management of ecological resources, with special attention to soil conservation, wildlife, wetlands, estuaries, croplands, grasslands, etc.; improving programs of training in environmental sciences recipient countries; providing extension work; commitment to increasing the proportion of MDB programs supporting environmentally beneficial projects; increased emphasis on energy efficiency; promoting establishment within the Economic Development Institute of the World Bank a component to provide training in environmental and natural resource planning and program development.

The Secretaries of State and Treasury were directed to undertake diplomatic and other initiatives to encourage similar emphasis on environmental soundness among other representative institutions in the MDBs. The

Administrator of AID was instructed in this legislation to instruct AId missions and U.S. embassies to analyze environmental impacts of MDB projects in advance of the project approvals. Such reviews are to address adverse impacts on the environment, natural resources and indigenous peoples, and recommendations for eliminating adverse impacts are to be made by AID reviews. The feasibility of an "early warning system" for projects of concern with other interested donors was to be studied.

Media Attention

Media attention has also put pressure on World Bank with respect to environment. In recent months, Sixty Minutes, the popular Sunday Night news magazine television program, aired a segment on the Bank's problems with the Polonoroeste Project in Brazil. The information in the program drew on the material of the environmental groups, who had brought similar information to the Congress several years ago, regarding this project.

In 1986, the Sierra Club produced a widely circulated report called Bankrolling Disasters that summarized many of the concerns that were being expressed by environmental groups. This was preceded by several articles in various environmental journals and the press about these concerns.

World Bank Reorganization Plans

On May 5, 1987, the President of the World Bank, former U.S. Representative Barber Conable, announced in a major speech on environmental issues that the World Bank would be substantially reorganized, and that as part of that reorganization, environmental concerns would receive high priority. He

announced that a Department would be established for environmental concerns, staffed by some 50 people, with environmental staff in the regional divisions as well as at headquarters.

In this speech, Mr. Conable acknowledged the importance of environmental protection in achieving development goals, and noted longstanding Bank policies to protect the environment. He also acknowledged that together with some successes, "Inevitably, the Bank has also stumbled." He committed the Bank to seeking solutions: "If the World Bank has been part of the problem in the past, it can and will be a strong force in finding solutions for the future."

He also mentioned the continuation of large projects will remain, but: "Our role in such projects, however, will include greater sensitivity to their long-term environmental effects. We will put new emphasis both on correcting economic policy incentives that promote environmental abuse and on stimulating the small-scale activities that can combat human and environmental deprivation. Not only will we strengthen the Bank's longstanding policy of scrutinizing development projects for their environmental impact and withholding support for those where safeguards are inadequate, but we will also institutionalize an approach to natural resource management that puts a premium on conservation."

Mr. Conable committed the World Bank to several new initiatives:

--a country-by-country assessment of the most severely threatened environments in developing nations;

--a continent-wide initiative against the advance of the desert and the destruction of forests in Africa;

--a contributing role in a global program to support tropical forest conservation;

--participation in a cooperative effort by Mediterranean nations and international organizations to prepare a long-term campaign to protect the Mediterranean Sea and its coasts.

Mr. Conable emphasized the environmental needs in Africa, and said: "I believe we must mount an international environmental rescue and development effort in sub-Saharan Africa. I will ask World Bank staff experts to draw up a special program of technical studies to identify and assess urgent, promising environmental protection projects, regional, not just national, in their scope." Among the other objectives he emphasized, he also stated commitment of resources to forestry: "The Bank intends to more than double its annual level of funding for environmentally sound forestry projects from $138 million this year to "$350 million in fiscal 1989."

This reorganization and the renewed commitment to environmental concerns go well beyond earlier efforts to establish environmental guidelines for Bank projects, but skeptics are taking a "wait and see" attitude about real change. Environmental guidelines and policies have been in effect for several years, but they have not prevented problems from arising. A number of questions remain as the World Bank institutes its reorganization. Among them:

--Who will head the new Environment Department?

--How high a continuing priority will environmental concerns be at the highest levels in World Bank management?

--What will be the mechanisms by which the Environment Department staff interact with other Bank staff; how will the concerns for which the Depart-

ment is responsible be integrated into planning and analysis throughout the Bank?

--What environmental training will the new Department staff have? To what extent will personnel from elsewhere in the Bank--especially those without environmental expertise--staff the new environment unit?

--How successful will the World Bank be in upgrading environment as a development priority in recipient governments? Is this not a necessary concomitant of increased concern for environment in Bank-funded projects?

--Will the environmental assessments to be conducted by the Bank in specific countries result in plans for projects targeted specifically--and effectively--on redressing the problems identified?

--To what extent will other MDBs institute similar reforms aimed at increasing environmental considerations in their planning and project activities?

Attached are four items:

(1) Section 539 of P.L. 99-591, containing directives to U.S. agencies to seek increased environmental emphasis in World Bank and other MDB activities;

(2) Bankrolling Disasters, the Sierra Club report on the World Bank which summarizes many of the concerns that have been raised by critics of its environmental performance;

(3) The May 5 speech given by Barber Conable concerning the World Bank reorganization and the need for higher priority for environment in World Bank operations;

(4) A July 3, 1987, Wall Street Journal article about current developments on environment and U.S. policy regarding the MDBs.

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GREENPEACE

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The Honorable Quentin N. Burdick, Chair
Senate Environment and Public Works Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

Greenpeace respectfully submits the following comments on the amendment to S. 1792 to extend the National Environmental Policy Act (NEPA) requirements to proposals for international financial assistance. Our interest in the bill is prompted by, first, our awareness of widespread problems in the Third World with the adverse environmental impacts associated with multilateral development bank projects, and second, our standing commitment to the adoption of a rigorous environmental impact assessment process for all projects of MDBs and other donor organizations working in the Third World.

Moreover, we are particularly interested in securing a more open process for the people whose lives could be profoundly affected by environmentally unsound development projects. Of primary importance are access, by indigenous NGOs, to project information at the earliest possible time, and the full participation of non-governmental organizations in the project planning and cycle.

Our statement, we believe, provides compelling evidence on the appropriateness of applying section 102(2)(C) of NEPA to MDB activities. We believe S. 1792 is not only appropriate but essential in augmenting the movement by other international and bilateral aid institutions, including U.S. Agency for International Development, the United Nations Environment Program, and many more, to conducting environmental impact assessment for development projects.

There is no reason why such environmental impact assessment processes cannot also be undertaken by the MDBs. For institutions which have such an enormous influence on the environments in developing countries to ignore such a fundamental responsibility is simply inexcusable. Indeed, when the 100th Congress examined the environmental protection policies of the World Bank, Africa Bank, Asia Bank and the Inter-American Development Bank it concluded U.S. appropriations should be conditioned, in part, upon reform of their environmental impact assessment procedures.

Use of the NEPA process as proposed would provide the opportunity to establish the process, authorized by Congress and required of the Secretary of the Treasury, for ensuring the environmental review of all Bank-funded projects.

If we can be of any further assistance in this effort, please don't hesitate to contact us.

Sincerely,

Kay Treakle

Kay Treakle
for Greenpeace USA

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Statement of

Kay Treakle for Greenpeace USA

Before the Senate Environment and

Public Works Committee

June 21, 1988

INTRODUCTION:

Mr. Chairman, and members of the Committee, I am grateful for the opportunity to submit this testimony for the record. I am Kay Treakle, U.S. Coordinator for Greenpeace's international pesticides program. Greenpeace is an international environmental organization with 850,000 members in the United States, and over two million members worldwide. With offices in seventeen countries, Greenpeace is one of the largest environmental organizations in the world. Our interest in this committee's work stems both from a concern over the worldwide proliferation of pesticides, often facilitated by financing from the Multilateral Development Banks (MDBs) and of the massive negative environmental impacts from large MDB projects such as large dams, deforestation schemes, and other development projects.

Greenpeace supports the concept of amending the National Environmental Policy Act (NEPA) to require that environmental impact assessments be prepared and considered prior to U.S. votes on proposed actions by Multilateral Development Banks, as written by the Natural Resources Defense Council. We feel this amendment is vitally important to the routine operations of the MDBs. Indeed, the environmental impact assessment process as outlined in NEPA is the missing, crucial component necessary to better insure full implementation of the goals and objectives of MDB projects.

It is our view that environmental impact assessments should be a fundamental component of all Bank-financed development projects and sector loans. This requirement is not only vital to protecting the environments of developing countries. It is crucial to their future economic stability. As Barber Conable, president of the World Bank, has stated many times, "sound ecology is good economics". We cannot continue to squander future resources on perceived immediate economic gains. Serious consideration must be given to the many potential environmental consequences of proposed development projects. Moreover, the people of the Third World continue to experience profound adverse impacts from our investments in international development, due principally to the lack of a strong role that environment plays in the political economics of development decisions.

The key to redressing the imbalance in the project cycle is to incorporate environmental technical expertise at the earliest stages of program planning. This includes incorporating the viewpoint of the locally affected citizens, who ostensibly stand to benefit or lose from these projects, as bona fide experts who can provide essential local perspectives about the benefits and consequences of projects which affect them.

These consequences cannot be factored in without a full understanding of the ecosystems in which the proposed projects will be sited. It is not enough to conduct an environmental

impact assessment for, for example, one project, and then use the results to assess risk in other, similar projects. Instead, we support the concept of requiring that the elements of NEPA Section 102 (2)(C) be applied to all projects financed by the MDBs.

The advantages of conducting an environmental impact assessment prior to US votes on proposed actions by MDBs are:

1) To assist Bank staff in identifying possible adverse environmental consequences prior to project approval.

2) To provide rigorous procedures, including the consideration of alternatives, that can adequately mitigate such consequences.

3) To provide local Non-governmental organizations (NGOs) and affected people in project design, planning, and implementation via scoping sessions.

4) To assist the U.S. Executive Director in making informed decisions regarding proposed projects.

Our testimony follows Section 102(2) of NEPA, which provides the basis for our support for the proposed amendment that would apply the "same requirements as to content as are required for environmental impact statements under paragraph (C)."

NEPA AS A BASIS FOR AN ENVIRONMENTAL IMPACT ASSESSMENT PROCESS FOR THE MDBs:

Section 102 (2)(C) states that all agencies of the Federal Government shall:

"Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on:

(i) The environmental impact of the proposed action"

Most large-scale projects undertaken by multilateral development banks will have inherent environmental impacts. One cannot build dams, finance cattle ranching schemes, or increase agricultural production without disrupting the environment. What an environmental impact assessment will do is to identify all possible ramifications of a proposed project, in order to adequately prevent the kind of ecological disasters that have almost routinely come in the wake of the large projects funded by the MDBs.

An example of the kinds of impacts that would be identified in an environmental impact assessment can be found by looking at a project currently being financed by the Inter-American Development Bank (IDB) in Costa Rica. This project illustrates that initial impact assessments, even on an ad hoc basis, can be

effectively undertaken as part of project planning.

The Tempisque Arenal Irrigation Project proposes to diversify and intensify Costa Rica's agricultural exports. A pilot project has irrigated 14,000 hectares of land in the dry Guanacaste Province, and another 60 - 70,000 hectares are scheduled to be brought under irrigation by 1999. The IDB has, as part of its second stage loan, committed approximately $1.2 million to carry out environmental protection programs. They have identified several significant environmental impacts that could impede the long-term success of Tempisque; and, as part of the loan, have provided for certain measures that, if implemented, could mitigate these impacts.

Of utmost importance is the affect that the irrigation project will have on the ecological integrity of downstream areas including the Palo Verde National Park and the Dr. Rafael Lucas Rodriguez Caballero Refuge. The project loan provides for the development of conservation plans for these areas.

Additionally, the loan addresses such issues as soil, water, and vegetation conservation for 800 crop growers and livestock raisers operating in the Arenal watershed, including the preparation and implementation of a detailed plan for the long-term management of the basin.

Built into the loan are measures such as pesticide use guidelines and a pesticide monitoring program. The loan stipulates that Integrated Pest Management -- a method in which pesticide use is vastly reduced while biological controls are emphasized -- be the preferential pest control strategy for the project.

(Since the specific environmental protection and conservation efforts have yet to be developed for the second stage of the loan, it remains to be seen how well the environmental impact assessment and mitigation measures are actually carried out.)

Costa Rica's sensitivity to the environmental consequences of development seem to be a fundamental reason for the attention paid to the potential impacts of this IDB loan. Unfortunately, this is the exception rather than the rule for the majority of Third World countries. Far and away, the norm in most countries is to conduct projects ignoring any rigorous process to assess adverse impacts on the environment and the people these projects are intended to benefit.

(ii) Any adverse environmental impacts which cannot be avoided should the proposal be implemented."

The excessive use of chemical inputs in developing countries gives us countless examples of unavoidable consequences of certain agricultural development patterns. For example, in

adopting the Green Revolution technologies, Third World countries, while noticeably increasing their food production, did not anticipate the subsequent environmental and economic consequences. These included loss of genetic diversity in subsistence food crops, the introduction of new pest problems due to the adoption of monocultural cropping methods, and substantial increases in costs due to reliance on technological packages that include seeds, pesticides, and fertilizers.

If environmental impact assessments are required, countries can begin to identify the potential consequences of proposed projects, and thus have the information necessary to avoid what has become a continuing imposition of inappropriate technologies.

However, many Third World countries do not have the infrastructure to anticipate the likely complex social, health, and environmental ramifications of development projects, either during the project cycle, or after the project has been completed. For example, the World Health Organization (WHO) in 1986 sampled 44 African countries to assess how well they were meeting requirements for control of environmental health hazards [1]. Thirty eight countries met few requirements, and none of them had achieved a level where most WHO requirements were met.

As a result of the lack of infrastructure, there are no standard provisions for making a "go", or "no-go" decision on a project based on the environmental or social impacts. The financial and technical resources necessary for countries to carry out their own environmental impact assessments do not exist, or are inadequate for the level of technology involved.

The MDBs, as primary financiers and planners of development, should be responsible for implementing environmental impact assessment procedures of projects they fund.

"(iii) Alternatives to the proposed action."

Negative environmental impacts can often be mitigated by the development of alternative projects, practices, and technologies, or by abandoning the project altogether. Considering the environmentally disastrous track record of the MDBs, it is both ecologically and economically prudent to begin requiring that these institutions consider viable alternatives in all projects it finances.

For example, instead of automatically financing expensive synthetic inputs such as chemical fertilizers and pesticides, project planners should be required to consider alternative cropping patterns and pest management schemes that inherently provide biological nutrient cycling and that limit damage from pests. This caveat should apply not only to new projects, but to projects that have been financed by MDBs over several years.

An example of where serious consideration of alternatives could have substantially altered the outcome of an agricultural project can be found in the Sudan, where cotton has been grown under irrigation in the Gezira region since the completion of a dam on the Blue Nile in 1925. In recent years, the introduction of chemical pesticides has led the Sudan to repeat a classic cotton-pest cycle that in Peru, Mexico, Texas and California has resulted in almost complete collapse of the cotton industry. Briefly, this cycle consists of

A recent World Bank loan to the Sudan for $53 million for the purchase of pesticides was approved despite ample evidence that the Gezira cotton scheme, which has received a total of over $100 million for pesticides in the last few years from the World Bank, is on the verge of collapse due to chemical overdose. Implementation of an alternative pest management scheme, such as Integrated Pest Management, is critical if Sudan is to continue producing cotton in the Gezira. Such an alternative was all but absent from the 1987 loan proposal.

As a result, another year of pesticide reliance will add to the already overburdened cotton scheme, furthering pest resistance problems, loading the environment with hazardous chemicals, and perpetuating an already disastrous public health problem of schistosomiasis. Pesticide runoff into irrigation ditches in the Gezira is toxic to the fish population, introduced as natural predators to the snails that carry the schistosomiasis parasites.

Impacts on human health and the environment, as well as high costs, make pesticides unsustainable components to development projects. Alternative pest control strategies often require less capital, do not have the expensive health and environmental side effects, and do not lead to pest resistance, resurgences, and secondary pest outbreaks. Such alternatives as Integrated Pest Management, biological pest control, and innovative strategies for crop production, can be routinely implemented in Bank-sponsored projects and sector loans if the MDBs are required to consider alternatives to pesticides in the context of an environmental impact assessment.

> "(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity."

Past loans and economic adjustment programs have ignored environmental costs. Ecology has not been part of the economic equation because real costs -- in terms of public health, environmental restoration, and loss of resources -- are not measured in traditional cost-benefit analyses. However such costs, when calculated after a disaster has occurred, can be staggering. Moreover, these costs are not isolated to the project area, but can often undermine other national development

investments.

The impacts of the Tucurui dam in Brazil's Amazonia illustrate this relationship between short-term uses of the environment and long-term productivity. The total cost of the dam construction is expected to be at least $8 billion [2]. Construction costs include the concrete and steel structure itself and the labor to build it.

The real costs, however, will come due long after the construction, financed largely by the World Bank, is finished. These include the inundation of 216,000 hectares of forest land, resulting in loss of biomass, eutrophication of the resulting reservoir, loss of wildlife -- including endangered species -- and siltation, flooding, and other severe water management problems.

Moreover, large dam construction displaces people, disrupts communities and creates social and health impacts that can only perpetuate the cycle of poverty. Countries will continually need to respond to these problems with further commitment of resources to finance the necessary health, social, and environmental clean-up programs. This is a vicious cycle that is unnecessary and debilitating to the goals and objectives of development.

MDBs should be expected to identify such environmental and social hazards before they begin projects. By undertaking rigorous environmental impact assessments, they can attempt to ensure that short-term gains from a given project would not preclude long-term sustainable development. With so much now known about the devastating consequences of large dam construction and other "mega-projects", it is criminal that the MDBs do not routinely reject proposals for such projects based not only on a process of environmental impact assessment, but indeed on their own past experience.

"v) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented."

Environmental considerations are too often seen as being outside the realm of project planning, and if evaluated, are done so long after irretrievable damage is done. Only through proper foresight and planning, inherent in an environmental impact assessment process, can large-scale disasters be avoided in the future.

But since projects are generally decided on political and economic merits it is not surprising that there exist numerous examples of outright squandering of future resources by MDB-financed projects. The short-sightedness of cavalier "development" has often resulted in de-development -- or the degradation of the environment to the extent that the supposed

beneficiaries of MDB-financed projects face economic ruin, their environment degraded beyond repair.

For example, the permanent losses of forest and soil resources to short-term development projects will have severe impacts on Brazil's economic future. Polonoreste is a massive project in the Brazilian state of Rondonia in northwestern Brazil. The purpose of the project is to resettle rural populations and open up vast tracts of forested land to agriculture and cattle ranching. Tragically, Polonoreste has resulted in a cycle of deforestation and land degradation that has had enormous economic and ecological repercussions.

In 1985, over 200,000 settlers moved to Rondonia in response to this dubious land reform program. With over $2 billion in World Bank funds, the Brazilian government gave empty promises to people who had expectations of land ownership and productive farming. Instead, they found that the rainforest soils were ill-suited to farming; within two years their crops had failed.

Once the soil and the source of nutrients are gone, reforestation, agriculture, and other productive land uses are impossible. In Rondonia, over 80 percent of the settlers have since sold their land and moved away [3].

Third World countries do not have the luxury of time and resources to recover from gross project mistakes involving irreversible and irretrievable commitments of resources. There are no other sources of assistance available to rectify the exacerbated problems of hunger, poverty, landlessness and a ruined resource base that result from such mistakes. There must be a commitment to <u>prevention</u> -- to assess the potential damage before its done, rather than paying heavily for it later.

CONCLUSION:

Environmental impact assessment processes are becoming more routine in development planning of international and bi-lateral aid institutions. The U.S. Agency for International Development uses a variation of the NEPA process to conduct environmental impact assessments for projects it funds. Citizens and environmental organizations are invited to submit comments and identify possible impacts.

Further, the United Nations Environment Program and the Organization for Economic Cooperation and Development have environmental impact assessment guidelines to help developing countries identify and avoid potential ecological destruction. The World Commission on Environment and Development, in its report "Our Common Future," proposed an international agency to evaluate environmental impact assessment of development projects for Third World countries. And in 1987, the Netherlands advanced

that idea by proposing the establishment of an International Commission for Environmental Assessment to provide technical review of environmental assessments for developing countries.

There is no reason why such processes cannot also be undertaken by the MDBs. For institutions which have such an enormous influence on the environments in developing countries to ignore such a fundamental responsibility is simply inexcusable. Indeed, when the 100th Congress examined the environmental protection policies of the World Bank, Africa Bank, Asia Bank and the Inter-American Development Bank it concluded U.S. appropriations should be conditioned, in part, upon reform of the banks' environmental impact assessment procedures.

Congress instructed the Secretary of the Treasury, in Section 537 (a) of the FY88 Continuing Resolution to:

"instruct the United States Executive Director of the Multilateral Development Banks (MDB's) to continue to vigorously promote a commitment of these institutions to --

(2) develop and implement management plans to ensure systematic environmental review of all projects;
(3) fully inform and involve host country environmental and health officials (Federal and local) and non-governmental environmental and indigenous peoples organizations at all stages of the project cycle in environmentally sensitive projects as well as in policy based lending to ensure the active participation of local communities and non-governmental organizations in the planning of projects that may adversely affect them;

The proposed amendment to NEPA is a good starting point for the Subcommittee's consideration of an environmental impact assessment procedure which the U.S. Executive Director could present to the MDB's. It is time to demonstrate the same level of concern over the impacts of Third World projects to which the U.S. contributes that we display in our consideration of projects undertaken in our own backyard.

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